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No. 80-1950

In The Supreme Court of the United States

OCTOBER TERM 1980

VINCENT E. MARINO, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Question Presented

Whether, in a prosecution under 18 U.S.C. § 660, which separately requires that the victim of an embezzlement be a "corporation engaged in commerce as a common carrier" and further that the embezzled funds arise or accrue from, or be used in, interstate commerce, the Government met its burden by alleging and proving only one of the two jurisdictional requirements.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Petitioner Vincent E. Marino respectfully requests that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Second Circuit entered on January 22, 1981.

OPINION BELOW

The opinion of the Court of Appeals is reported at 639 F.2d 882. It appears in the Appendix hereto at A-1–A-18.* The District Court filed no opinions on issues raised in this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on January 22, 1981. (A-19). On February 5, 1981, Mr. Marino filed a timely petition for rehearing and a suggestion of rehearing *en banc;* the petition and suggestion were denied on March 18, 1981. (A-20). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

This case involved application of 18 U.S.C. § 660. That section appears at A-21.

STATEMENT OF THE CASE

A. The Facts

Vincent Marino and William O'Donnel were executives and principal owners of Marine Repair Service, Inc., a New York company that repaired containers, container chassis, and other equipment used in ship transportation. In 1974 and 1975, Prudential Grace Lines, Inc., a large American flag carrier engaged exclusively in foreign commerce, needed extensive modification work on approximately 50 container chassis.

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* Citations to the Appendix to this petition are in the above form. The Joint Appendix in the Court of Appeals is cited as "J.A."; references to "Tr." followed by a date are to the transcript proceedings on that date; references to "Ex." are to Government's Exhibits, which were included in an exhibit volume on appeal.

In August or September, 1974, Keith Nelson, the Director of Intermodal Operations at Prudential, spoke with Marino at Marine Repair's office in Staten Island about reconditioning or modifying several Prudential container chassis. Shortly thereafter, Marino reported to Nelson that the modification of the chassis would cost either $1,995 or $2,450, depending on the chassis model involved. (J.A. 193). Nelson objected that the price was too high, to which Marino allegedly responded by smiling and saying "[g]o see your boss about it." *Id.* Nelson spoke with John Marano, an executive vice president and director of Prudential. Marano told Nelson that Marino's quoted price included $900 kickbacks which Marano, Nelson and Anthony Scotto would share equally. (J.A. 195-96; 206).

On various dates between November 1974 and July 1975, Marine Repair performed modification work on many of Prudential's chassis. Nelson testified that whenever approximately ten chassis had been completed (J.A. 209), Marine Repair would submit an invoice to Prudential, and Nelson would approve and expedite payment of the invoices. A check would issue from Prudential to Marine Repair (Ex. 21-25), and would be deposited in Marine Repair's account. (Ex. 26A, 26B, 26C). Thereafter, Nelson allegedly received his kickback by means of a check made out to Container Sales, Ltd., a fictitious company which Nelson controlled. (J.A. 218-19).

No witness testified that any part of the illicit scheme involved interstate commerce, and no document suggests interstate movement of any sort. Prudential's offices were within the City of New York, and its container chassis were stored in yards in Brooklyn, New York. Marine Repair's offices and yards were in Staten Island. (J.A. 172, Tr. 660). Thus, the chassis repaired by Marine Repair only traveled between Brooklyn and Staten Island. Furthermore, Prudential maintained its bank accounts in New York City (J.A. 139); Marino delivered the Marine Repair invoices in person to Prudential (J.A. 212); and the Prudential checks were deposited in New York State banks by Marine Repair. (Ex. 26A, 26B and 26C). Similarly, Nelson picked up his

"kickback" checks in person in Staten Island. (J.A. 254, 259, 263). In short, the entire process—from the initial communciation between Nelson and Marino, to the transfer of container chassis from Prudential to Marine Repair, through the receipt of kickbacks by Nelson—took place completely within New York State.

B. The Indictment, The Trial and the Court of Appeals' Opinion

1. *The Indictment.* Mr. Marino was originally indicted on January 17, 1979, in indictment 79 Cr. 32, which charged him with four misdemeanor violations of the Taft-Hartley Act, 29 U.S.C. § 186(a). On July 31, 1979, the Government filed superseding indictment S 79 Cr. 32, which realleged the same four misdemeanor counts against Mr. Marino, making other changes not relevant here. On December 12, 1979, a third indictment, SS 79 Cr. 32, abandoned the previous Taft-Hartley violations, and alleged in their stead five counts of violating 18 U.S.C. § 660 and of conspiracy to do so. One day later, the Government filed its fourth indictment against Mr. Marino, SSS 79 Cr. 32, which realleged the Section 660 violations against him and added for the first time co-defendant William O'Donnel to three of the five counts. The indictment alleged that the defendants participated in a scheme to embezzle funds "arising and accruing from, and used in, in whole and in part, Prudential Lines' business as a firm and corporation engaged in commerce as a common carrier. . . ." (A-23).

2. *Pre-trial Proceedings and Trial.* Prior to trial, the defendants moved to dismiss the indictment on the ground, *inter alia,* that it failed to state a crime under 18 U.S.C. § 660 in that it alleged only one of Section 660's two interstate commerce jurisdictional requirements. The trial court denied the motion without an opinion. Tr. March 5, 1980 at p. 34.

At trial Mr. Marino was convicted on all four counts submitted to the jury.* He was sentenced to a term of one year and one day on Counts One and Two (to be served concurrently), and two years of probation on Counts Three and Four.

3. *The Court of Appeals' Opinion.* On appeal to the United States Court of Appeals for the Second Circuit, Mr. Marino's principal claim was that the Government had misinterpreted and misapplied the jurisdictional provisions of Section 660 and had failed to allege and prove the two separate and independent jurisdictional links to commerce required by the statute. Specifically, he argued that in addition to demonstrating that the funds have been embezzled from a firm engaged as a common carrier in commerce as required in the first clause of Section 660, the Government must prove that the purloined funds arose or accrued from or were used in such commerce, at least in part, as required by the last clause. For its part, the Government argued that Section 660 applies to embezzlements from common carriers whether or not the embezzled funds themselves had any direct connection with interstate commerce. It argued that since the general funds of Prudential derived at least in part from transactions in commerce, and since Marino participated in a scheme to embezzle general funds, the jurisdictional requirements of the statute were satisfied.

In an opinion dated January 22, 1981, the Second Circuit panel rejected Marino's arguments and affirmed the conviction. *United States* v. *Marino,* 639 F.2d 882. Describing the legislative debates relating to Section 660 as at times "somewhat confused," the Court found that "[t]he debate does not support Marino's position that the funds must be traced to a specific transaction in interstate commerce." (A-10). Instead, it noted that Congress intended the "arising from" language only to require that embezzlement of funds have an effect on commerce sufficient to justify federal

* On the Government's consent, two counts were consolidated into one at the close of the Government's case. A redacted indictment (A-22 - A-26) was submitted to the jury.

intervention under the Shreveport Rate Case, *Houston, East and West Texas Railway* v. *United States*, 234 U.S. 342 (1914). From this premise, and without citing to any specific language from the debates, it concluded that "[t]he correct focus is on the connection between the funds of the common carrier and foreign or interstate commerce and is not between the funds and some particular transaction in commerce." (A-10).

As if forgetting this last statement, the Court later acknowledged that "the statute requires that the embezzled funds themselves be connected with foreign or interstate commerce, not that the funds be connected to a business which is engaged in commerce." (A-12). The Court seemed satisfied, however, because while "more precise draftsmanship charging that the funds and assets themselves bear some relation to interstate commerce beyond mere ownership by the common carrier would have been preferable, the indictment may be fairly read to charge that the funds were in fact derived from foreign or interstate commerce." (A-11). Moreover, it concluded that "any money accruing from or used in Prudential's steamship business must be largely composed of funds which arise from or are used in foreign commerce and which therefore satisfy the jurisdictional requirements of Section 660." *Id.*

REASONS FOR GRANTING WRIT

The pertinent provisions of 18 U.S.C. Section 660 are as follows:

> Whoever, being a president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, or whoever, being an employee of such common carrier riding in or upon any railroad car, motortruck, steamboat, vessel, aircraft or other vehicle of such carrier moving in interstate commerce, embezzles, steals, abstracts, or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from, or used in, such commerce, in whole or in part, or

willfully or knowingly converts the same to his own use or to the use of another, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

As set forth in greater detail later in this petition, Section 660 is unique in the federal criminal code in that it requires two separate links with interstate commerce: the first clause requires that the victim be a "firm, association, or corporation engaged in commerce as a common carrier" and a later clause makes it a crime to embezzle funds "of such firm, association or corporation arising or accruing from, or used in, such commerce, in whole or in part. . . ." In this case, as in other cases in the Southern District of New York, the prosecutor deliberately ignored these separate and independent jurisdictional requirements. It proceeded on a theory that satisfaction of the first requirement—that the embezzlement be of a common carrier—necessarily satisfied the second requirement, and that allegation and proof of embezzlement of the general funds of a carrier without any specific link between such funds and commerce satisfies the statute. Thus, the prosecutor ignored the language of the statute and alleged simply that the defendants participated in a scheme to embezzle funds "arising and accruing from, and used in, in whole and in part, Prudential Lines' business as a firm and corporation engaged in commerce as a common carrier. . . ." (A-23). Similarly, the proof showed only that the defendant embezzled general funds of Prudential and failed to demonstrate that the embezzled funds arose or accrued from or were used in commerce, even in part.

The opinion of a panel of the Court of Appeals, which allows the Government to premise a violation of 18 U.S.C. Section 660 upon alleging and proving only one of two separate jurisdictional requirements, should be reviewed by this Court for at least three reasons.

First, the decision is clearly incorrect. The language of the statute itself, its lengthy and detailed legislative history, and every applicable canon of statutory interpretation all compel a conclusion that Section 660's separate jurisdictional requirements must be separately alleged and proved.

Second, *the decision in this case conflicts with the practice in every other prosecuting district that has used Section 660.* As set forth in greater detail in the petition, the prosecutors in every judicial district other than the Southern District of New York have separately alleged the two jurisdictional requirements of Section 660 and, as far as research reveals, have adduced proof that the embezzled funds directly derived from interstate commerce.

Third, the panel's decision yields the unintended result of distorting the relationship between Section 660 and other sections of the Criminal Code. Thus, a statute which was clearly intended by Congress to require definite and precise links with commerce is being applied to criminalize situations in which far less restrictive federal criminal statutes cannot be used.

I. The Decision of the Panel is Plainly Incorrect

Without exception, every aid to statutory interpretation—the intrinsic language of the statute itself; its legislative history; and the applicable canons of interpretation—support Mr. Marino's contention and demonstrate the error of the panel's decision.

A. The Statutory Language.

Section 660 appears to be unique in the federal criminal code in that it requires two separate and independent links with interstate commerce. The language and structure of the statute demonstrate that these twin requirements were not designed to be repetitious or redundant, but rather were meant to require separate allegations and proof.

The first jurisdictional requirement—that the defendant be an officer "of any firm, association, or corporation engaged in commerce as a common carrier"—is clearly directed to the status of the defendant and his victim.* The second jurisdictional requirement of Section 660 is not directed to the defendant or the victim, but rather to the origin of the

* Section 660 also contains an alternative means of meeting this first jurisdictional requirement, which is directed to a defendant who is "an employee of such common carrier." The indictment alleged that the principals of the crime in which Mr. Marino participated, Keith Nelson and John Marano of Prudential Lines, were officers or managers of that corporation, and thus the alternative "employee" provision of Section 660 was not involved in this case.

embezzled funds themselves. This second requirement initially refers back to the first, stating that the embezzled funds must be "of such firm, association or corporation"; it then requires in addition that the funds be "arising or accruing from, or used in, such commerce, in whole or in part. . . ." In short, a common-sense reading of the statute demonstrates the obvious: Congress required that, first, the defendant be an officer of a common carrier, and, second, that wholly apart from the relationship of the carrier with interstate commerce, the funds themselves have a direct link with commerce. Since the indictment alleged only that the embezzled funds came from Prudential's business as a common carrier, and since there was neither allegation nor proof that the funds themselves had any link with interstate commerce, neither the indictment nor the proof at trial satisfied the terms of the statute.

B. The Legislative History.

The panel's error is also confirmed by the statute's legislative history. The relevant portion of Section 660 was first enacted in 1914 as Section 9 of the Clayton Antitrust Act, Ch. 323, § 9, 38 Stat. 730 (1914), subsequently codifed as 18 U.S.C. § 412 (1940 ed.) and later as 18 U.S.C. § 660 (1948 ed.). In 1914, Congress obviously could not envision the expansive interpretation of the Commerce Clause developed during the New Deal and thereafter. Rather, Congress was acutely aware of its limits under the Commerce Clause.

As first proposed by the Senage Judiciary Committee, the pertinent language of the bill which became the forerunner of Section 660 provided:

> Every president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts, or willfully misapplies any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony. . .

51 Cong. Rec. 14031 (1914). This version did not include the second interstate commerce nexus required by the present

statute, and thus, in essence, reflected the position now advocated by the Government.

When the original proposal reached the floor of the Senate, however, it was rejected. Several senators noted that the failure to require that the purloined funds themselves derive from interstate commerce raised questions under what they understood to be their constitutional limits under the Commerce Clause. *See, e.g.*, 51 Cong. Rec. 14037 (1914) (remarks of Senator Shields) ("the language of this bill will apply to any funds or assets of the common carrier, whether they be used in interstate commerce or intrastate commerce. I think as it is now written it is invalid"). Significantly, the defenders of the bill did not claim that a broad reading of the statute was constitutionally permissible, but rather urged that the statute had the more limited purpose of prohibiting acts directly linked to interstate commerce. *See, e.g., id.* at 14036 (remarks of Senator White) ("I believe Congress has the power to make it an offense to steal property on a railroad car or steamboat *while being carried from one state to another*") (emphasis added). In short, in these remarks and others, all the senators—both those in favor of and opposed to the bill as originally proposed—determined that an independent link between the crime and interstate commerce was necessary.

Responding to these concerns, Senator Culberson proposed an amendment to the bill that added the words "arising or accruing from such commerce, in whole or in part." *Id.* at 14041. This amendment was later adopted by the Senate, *id.* at 14223, and, with the addition of the words "or used in" by the Conference Committee, became law. *Id.* at 16170 and 16344. Thus, Congress specifically required not only that the victim corporation be a common carrier "in commerce," but also that the funds themselves have an independent connection with "such commerce."

Notwithstanding the clear purpose of this amendment, the panel interpreted the second jurisdictional requirement to require only that the embezzled funds derive from the general funds of the carrier, and that those general funds derive, at least in part, from commerce. (A-10 - A-11). This argument,

however, was expressly rejected by the Senate. At a key point in the deliberations on Section 660, Senator White, who supported the bill and defended its constitutionality, discussed the following question posed by Senator Cummins, who opposed both:

> MR. CUMMINS. Very well. The United States Steel Corporation is engaged in commerce among the States, and is therefore subject to our regulations in so far as we may impose rules that do constitute regulations of commerce. Does the Senator from Alabama say that we could pass a law making it a Federal offense or crime to commit larceny against the property of the United States Steel Corporation?
>
> MR. WHITE. Yes; *if that property was in process of transportation from one State to another.*
>
> MR. CUMMINS. *But suppose it was not?*
>
> MR. WHITE. *Of course we could not.*
>
> MR. CUMMINS. Why not?
>
> Mr. White. Because the Constitution has not conferred the power. We are without the power to do it. That is the answer.

51 Cong. Rec. at 14036 (emphasis added).*

Moreover, as the panel acknowledged (A-8), the addition of the second jurisdictional requirement, proposed by Senator Culberson, was introduced for the specific purpose of satisfying doubts of the critics of the original proposal. Since the

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* Moments later, Senator White made the same point in a somewhat more dramatic fashion, as follows:

> MR. CUMMINS. I suppose the Senator would not contend that we could make it a Federal offense under the constitutional power for a president of a railroad corporation to beat his wife?
>
> MR. WHITE. Not unless he beat her *while she was being transported from one State to another* by one of the agencies of interstate commerce. Then we would try him and convict him for it and we ought to hang him.

Id. (emphasis added).

persistent and repeated theme of these critics had been that Congress should not criminalize embezzlement of undifferentiated general funds or property of an interstate carrier, but should limit the federal crime to embezzlement directly related to interstate transportation, the purpose of the amendment was obviously to require such a link.

The panel, however, simply ignored the repeated and pointed observations of many senators, basing its entire reading of the legislative history on one remark of Senator Culberson which had nothing to do with the directness of the link between interstate commerce and the funds. Senator Culberson's statement, quoted at A-9, that "if intrastate receipts were affected as well as interstate receipts, the statute would apply, nevertheless. . . .", obviously reflects the view that if the embezzled funds derived both from interstate and intrastate commerce, Congress could constitutionally criminalize their embezzlement. While this explains the "in whole or in part" provision of the amendment, it has nothing at all to do with the attack on the original bill that the amendment was intended to satisfy, that is, the need for a link between the embezzled funds and interstate commerce.

Similarly, the panel's statement that the amendment to Section 660 "was intended only to require that the embezzlement of funds have an effect on commerce sufficient to justify federal intervention under the Shreveport Rate Case" (A-10), is wide of the mark. In his brief discussion of that case, in which no other Senator joined, Senator Culberson pointed out that if embezzled funds derived both from interstate and intrastate commerce, Congress may criminalize their embezzlement. 51 Cong. Rec. 14041. Once again, this explains the "in whole or in part" provision of the amendment which had been discussed at length by Senator Shields shortly before Culberson's remarks; it has nothing to do, however, with the requirement of a direct link between the embezzled funds and interstate commerce that the "arising or accruing from such commerce" language was designed to address.

In short, the panel's decision turns the lengthy legislative history of Section 660 on its head.* The original bill presented to the Senate was the subject of direct and pervasive objections relating to the lack of any connection between the embezzled funds and interstate commerce, and even senators supporting the provision voiced their opinion that the statute already required such a connection. In response to these lengthy remarks, the proponent of the bill proposed an amendment requiring that the embezzled funds arise or accrue from interstate commerce. The panel ignored the clear context and purpose of this amendment and based its entire reading of the statute on a few remarks—during a dialogue aptly described by the panel as becoming "somewhat confused" (A-10)—after the amendment had been introduced. Particularly since this Court has warned against relying upon the statement of one legislator when attempting to ascertain the intent of Congress, *see United States* v. *O'Brien*, 391 U.S. 367, 385 (1968); *see also Schwegmann Bros.* v. *Calvert Corp.*, 341 U.S. 384, 395-96 (1951) (Jackson, J., concurring), the panel's treatment of the legislative history is plainly wrong.

C. The Canons of Interpretation.

In its opinion, the panel did not address the applicability of any canons of statutory interpretation. But two clearly applicable canons—each forcefully raised by Mr. Marino on appeal—squarely refute the panel's interpretation of Section 660.

First, neither the panel nor the Government addressed the fact that their interpretations make the second jurisdictional requirement a superfluity. All general funds of an interstate carrier, as a matter of logic, must derive at least "in part" from interstate commerce. If the panel and the Government were correct, the second jurisdictional requirement would add nothing to the rest of the statute. This Court has long

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* While this petition of necessity can only quote from selected portions of the debate, the remarks in their entirety strongly support Mr. Marino's interpretation of Section 660. The debate is reproduced in the appendix on appeal at J.A. 669-699.

adhered to the rule of statutory construction that words in statutes should not be construed as excess verbiage. *See Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979); *United States* v. *Menasche*, 348 U.S. 528, 538-39 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute,' *Montclair* v. *Ramsdell*, 107 U.S. 147, 152, rather than to emasculate an entire section, as the Government's interpretation requires"). *See generally* II Sutherland, *Statutory Construction* § 46.06 (1973).

Since, as demonstrated by Congress' lengthy and scholarly debate, Congress clearly intended Senator Culberson's amendment to have a significant and limiting effect on the statute, the Government's attempt to render the amendment a nullity should be rejected. Furthermore, "words must be read with the gloss of the experience of those who framed them." *United States* v. *Rabinowitz*, 339 U.S. 56, 70 (1950) (Frankfurter, J. dissenting).* The prevalent view at the time of Section 660's enactment—and indeed, until at least 1937—was that the interstate commerce power should be cautiously exploited, *see* L. Tribe, *American Constitutional Law*, at 234-35 (1978), and the Government's current approach to interpreting Section 660 should be rejected.**

Second, if there is any ambiguity in Section 660, it must be resolved in favor of Mr. Marino. In *United States* v. *Bass*, 404 U.S. 336 (1971), the defendant was charged with violating 18 U.S.C. App. § 1202(a), which provided that anyone who "has been convicted . . . of a felony . . . and who receives, possesses, or transports in commerce or affecting commerce . . . any firearm" was guilty of a crime. The Government argued that the term "in commerce or affecting commerce" modified only the immediately preceding verb ("transports"), rather than the entire verb series. In contrast to this case, certain

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* Rabinowitz was overruled, on grounds not relevant here, in *Chimel* v. *California*, 395 U.S. 752 (1969).

** As one distinguished jurist has noted, "[W]hen Congress failed to use the words that it commonly does to invoke the whole sweep of the commerce power, the inference was that Congress did not intend to go so far." H. Friendly, "Mr. Justice Frankfurter and the Reading of Statutes," reprinted in *Benchmarks* 224 (1967) (footnote omitted).

"aspects of the meager legislative history . . . [did] provide some significant support for the Government's interpretation." *Id.* at 345. Nonetheless, the Court interpreted the interstate commerce requirement to apply not only to transporting but also to receiving or possessing a firearm. First, it followed the well-settled rule that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Id.* at 347, *quoting Rewis* v. *United States*, 401 U.S. 808, 812 (1971). *See also Whalen* v. *United States*, 445 U.S. 684, 695 n.10 (1980); *Simpson* v. *United States*, 435 U.S. 6, 14 (1978); *Adamo Wrecking Co.* v. *United States*, 434 U.S. 275, 283 (1978). Second, the Court held that "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." *Id.* at 349 (footnote omitted).

Both of these precepts apply to this case. As the Second Circuit panel's unconvincing and confused interpretation of the statute and its legislative history confirms, Section 660 is at best ambiguous; the ambiguity should be interpreted against the Government. Furthermore, Congress clearly demonstrated that it did not want Section 660 to intrude unnecessarily upon "conduct readily denounced as criminal by the States." *United States* v. *Bass, supra*, 404 U.S. at 349, as amply evidenced by the legislative history and the unusual last paragraph of Section 660,* which plainly contemplates that most enforcement activity in this area will be by the states.** Thus, this case is easily governed by *Bass*, in which the Government's argument was intrinsically more plausible and found support in the legislative history.

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* The final paragraph of Section 660 provides as follows:

> A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

** During floor debates on Section 660 when first enacted, several senators expressed the view that the states, rather than the federal government, should have principal responsibility for prosecuting embezzlements, even from common carriers. *See, e.g.*, 51 Cong. Rec. 14035-36 and 14038-39 (remarks of Senator Stone).

* * *

In short, the statutory language, the legislative history and canons of statutory interpretation combine to compel one conclusion: a criminal prosecution under 18 U.S.C. § 660 can be premised only upon a showing *both* that the victim corporation was a carrier "engaged in commerce" and, separately, that the embezzled or misapplied funds themselves "arose or accrued from, or were used in" interstate commerce. The Government's contrary interpretation of this statute resulted in a defective indictment, insufficient proof at trial, and an improper charge to the jury.

An indictment, to be sufficient, must allege all elements of the crime charged. *See Hamling* v. *United States*, 418 U.S. 87, 117 (1974); *Russell* v. *United States*, 369 U.S. 749, 763-64 (1962); *United States* v. *Debrow*, 346 U.S. 374, 376 (1953); *United States* v. *Chestnut*, 533 F.2d 40, 45 (2d Cir.), *cert. denied*, 429 U.S. 829 (1976); *United States* v. *Camp*, 541 F.2d 737, 739 (8th Cir. 1976). Here the Government framed an indictment that addressed one, but not both, of the interstate commerce requirements. While the indictment alleged that Prudential was a "firm and corporation engaged in commerce as a common carrier" and that the misapplied moneys derived from Prudential's business, the indictment ignored the second jurisdictional requirement of an allegation that the misapplied moneys themselves arose or accrued from interstate commerce.

Because the trial court adopted the Government's request to charge *in haec verba*, its instructions to the jury were similarly defective. The trial judge's charge on the requirement that the embezzled funds accrue or arise from interstate commerce was as follows:

> In this connection, I also charge you that it is not necessary for the Government to prove that the very dollars, monies, or funds which were, according to the Government's contention, misapplied or converted to Nelson's use or the use of others, were at

> some point actually used by Prudential Lines in commerce. The Government need only show that the conversion or misapplication involved funds or accounts which included monies, such as operating income, arising or accruing from, or used in, in whole or in part, Prudential's business as a common carrier engaged in commerce. (J.A. 639).

In contrast, the defense submitted its Request Number 28, which urged the Court to charge the language of the statute; that is, that the moneys at issue arose from interstate commerce. The trial court declined to charge this language on the ground that "I don't think that it is the law." (J.A. 451). For the reasons set forth above, this was error.

Finally, the Government failed to meet its burden of proving that the embezzled funds derived from interstate commerce. It is undisputed that all incidents of the illicit scheme occurred within one state. Neither the testimony nor any of the exhibits demonstrated or suggested that any of the acts from which the embezzled funds "accrued," "arose," or were "used" took place outside New York State. The damaged chassis were in New York before the scheme began; they were then transported within New York City to Marine Repair's yards; Prudential's checks were issued in New York and delivered to Marine Repair in New York; and the kickbacks and phony invoices were exchanged at Marine Repair's office on Staten Island.

In contrast, in every Section 660 decision outside the Second Circuit in which the reported opinion gives a detailed version of the facts, the facts demonstrate what the statute requires—a direct link between the interstate commerce and the embezzled funds. *See, e.g., United States* v. *Queen,* 445 F.2d 358, 359 (10th Cir.), *cert. denied,* 404 U.S. 1003 (1971), (theft of moneys derived from shipment from Colorado to Oklahoma); *United States* v. *Kimball,* 441 F.2d 505, 506 (10th Cir. 1971) (theft of proceeds of shipment from Nebraska to Oklahoma); *United States* v. *Cook,* 384 U.S. 257, 258 (1966) (embezzlement of "approximately $200 from funds of his employer accruing from an interstate shipment of

bananas"); *United States* v. *Tye*, 519 F.2d 586, 587 (10th Cir.), *cert. denied*, 423 U.S. 989 (1975) (theft of fees for delivery of packages from Illinois, Ohio, Florida and Minnesota to Kansas). The practice in the Southern District of New York, alone among the district courts, is thus clearly error.

II. The Decision in This Case Conflicts With The Practice In Every Other District That Has Used Section 660

Until recently, Section 660 has not been widely used by federal prosecutors, and the decisions interpreting its scope and application are relatively few. Several decisions appearing in the official reporters, however, quote in their text the critical language of the indictments upon which they were based. These decision are *United States* v. *Queen, supra*, 445 F.2d at 360; *United States* v. *McGee*, 242 F.2d 520, 521-22 (7th Cir. 1959); *United States* v. *Kimball, supra*, 441 F.2d at 506 and n. 1; *United States* v. *Tye, supra*, 519 F.2d at 587. Without exception, the prosecutor in each of these cases separately alleged, first, that the principal was an employee or officer of the common carrier engaged in commerce, and, second and separately, that the embezzled funds themselves derived from commerce.

On appeal to the United States Court of Appeals for the Second Circuit, Mr. Marino pointed out these decisions and urged that they showed that the practice in the Southern District of New York was unique. The Government responded that each of the cited cases involved the "employee" clause of Section 660, see p. 7, *supra* at n. *, and was thus inapplicable to "officer" prosecutions, such as the present one. For its part, the panel simply ignored the contrary practice in other districts and did not address Mr. Marino's argument.

Subsequent research has demonstrated that the Government's position is not only misleading but factually incorrect. The "officer" and "employee" clauses of Section 660 provide alternative means of satisfying the *first* jurisdictional link, that is, that the principal have the stated relationship with a

common carrier engaged in commerce. In both "officer" and "employee" prosecutions, however, the Government bears the burden of alleging and proving the second jurisdictional requirement, that is, the connection between the embezzled funds and commerce. Because Mr. Marino focused on this second requirement and did not contest the first, the purported "distinction" between officer and employee cases was irrelevant.

Since the argument in the Court of Appeals, and with the aid of the computer data base maintained by the Administrative Office of the United States Courts, counsel for Mr. Marino have identified every indictment filed within the last ten years under Section 660, and have obtained copies of all but a few of these indictments. A review of these indictments forcefully demonstrates three points.

First, *without exception, every District other than the Southern District of New York which has presented an indictment under 18 U.S.C. Section 660 has separately and independently alleged both of Section 660's jurisdictional requirements.** Instead of alleging only that the embezzled funds arose from the common carrier's business, as in the Marino indictment, every other District has charged first that the defendant was an officer or employee of a common carrier engaged in commerce, and second that the embezzled funds themselves derived from commerce. Since these indictments, which total more than 30 in number, are of critical importance in understanding the uniqueness of the prosecutor's practice in this case, the indictments are reproduced in their entirety in the Appendix at A-27–A-132.

Second, these indictments show that the Government's attempted distinction between "officer" and "employee" prosecutions is misplaced. As the attached indictments demonstrate, in at least five instances other Districts have

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* In *United States* v. *McKellips*, No. CR 78-200 (D. Ore. 1978) (A-96), the two commerce requirements do not appear to be separately alleged in the indictment. That indictment was ultimately dismissed, however. A subsequent indictment in that district against another individual correctly alleged the separate requirements. *United States* v. *Law*, No. CR 79-96 (D. Ore. 1979). (A-98).

filed indictments against officers of common carriers and have uniformly drafted the indictments to include separate jurisdictional allegations. (A-28, A-43, A-92, A-99, A-118). No District, other than the Southern District of New York, has combined the jurisdictional allegations into one.

Third, the record shows that in the Southern District of New York the interpretation of Section 660 reflected in the Marino indictment is not an isolated occurrence. In the last five years, the Southern District has utilized Section 660 in at least two previous indictments. *See, e.g., United States* v. *Gregg*, 612 F.2d 43 (2d Cir. 1979);* *United States* v. *Kole*, 442 F. Supp. 852 (S.D.N.Y. 1977). *See also* A-74, A-81. In each case, the indictments failed to allege the separate jurisdictional requirements.

Of even greater significance, after the impropriety of the drafting of the Marino indictment was squarely raised by Mr. Marino and his co-defendant in the District Court in this case, the United States Attorney's office for the Southern District of New York filed yet another indictment of Section 660 in which it persisted in collapsing the two jurisdictional requirements into one. See A-88.** In short, the Marino indictment was not a negligent or aberrational mistake. Rather, the Southern District of New York has deliberately and consistently adopted an interpretation of a statute that is dramatically at odds with the practice in every other District, and has served notice that it will continue to do so unless this Court reviews its interpretation.

No Court of Appeals other than the Second Circuit in this case has addressed the issue raised in this petition. The reason for this, however, is clear, and demonstrates that in every important respect there is a "conflict among the Circuits" within the meaning of Rule 17.1 of the Rules of this Court. As exhaustively illustrated by the indictments

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* In *Gregg*, the defendant's appointed counsel never raised, and apparently never perceived, the issue raised in this petition, and thus there is no discussion of it in the *Gregg* opinion.

** That indictment was subsequently superseded by an indictment that alleged only a violation of 18 U.S.C. § 371. *United States* v. *Marano*, SS 80 Cr. 149.

included in the Appendix to this petition, the prosecutor in every District outside of the Southern District of New York has properly drafted indictments alleging both jurisdictional requirements. In that circumstance, of course, there is no issue relating to the drafting of the indictment or the interpretation of the statute from which either the Government or the defendant can appeal, since the issue raised in this petition was already resolved by a proper interpretation. *The result on the administration of criminal justice, however, is precisely the same as if every other Court of Appeals had ruled in favor of Mr. Marino's position: an indictment like Mr. Marino's is permissible only in one District and has been rejected in every other District.* In short, no clearer "conflict" can ever arise, and this Court should review the unique interpretation which one District has adopted and doggedly continues to utilize.

III. The Panel's Decision Creates an Unwise and Unintended Policy in the Administration of the Federal Criminal Laws

The Second Circuit's interpretation of Section 660 creates an unwise and unintended policy in the administration of the federal criminal laws by distorting the relationship between that section and other sections of the Criminal Code. Since 1914, Congress has enacted many federal criminal statutes containing, in contrast to Section 660, only the most modest federal jurisdictional requirements. For example, the mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, have been held by this Court to apply to illicit schemes virtually identical to the one alleged by the Government in this case. *See, e.g., United States* v. *Corey*, 566 F.2d 429 (2d Cir. 1977). Similarly, under the Supreme Court's decision in *Perrin* v. *United States*, 444 U.S. 37 (1979), the facts alleged here would be covered by the felony provisions of the Travel Act, 18 U.S.C. § 1952, which prohibits commercial bribery of the sort alleged here. To avail itself of one of these statutes, the Government would have had to show only a single telephone call, a single use of the United States mails, or one instance in which a participant "travel[ed] in interstate or foreign commerce or use[d] any facility in interstate or

foreign commerce, including the mail." The reason the Government did not adopt one of these familiar and often-used statutes is obvious: the Government could point to no interstate travel—since all of the acts alleged to have been committed by the defendant and the co-schemers occurred in New York; no use of the mails—since the various invoices, checks, and other documents were hand-delivered; and no use of the telephone—since the schemers spoke to each other in person. Rather than leave the prosecution of the alleged scheme to the office of an appropriate New York State District Attorney, the Government chose to use a more restricted federal statute when it was unable to proceed with less restrictive one.

If this Court declines to review the Second Circuit's novel interpretation of 18 U.S.C. § 660, it will have eliminated even the modest jurisdictional requirements of the mail fraud, wire fraud and Travel Act statutes with respect to common carriers. It will have empowered the Government in one District alone to charge embezzlements from common carriers—with a maximum prison term double that of the other statutes cited above*—without any specific interstate commerce requirement. Since Congress in 1914 clearly intended Section 660 to be more, rather than less, restrictive in its application than the other and more modern statutes, the panel's interpretation should be rejected.

* The mail and wire fraud statutes and the Travel Act all provide for five-year maximum sentences.

CONCLUSION

If the decision of the panel in this case is allowed to stand, it will permit a single federal prosecutor's office, alone among all the federal districts in this country, to make continued use of a unique interpretation of a criminal statute when

(1) the statute, its legislative history, and canons of interpretation contradict the interpretation;

(2) every other prosecuting office, without exception, has followed a different interpretation of the statute; and

(3) the decision fundamentally alters the relationship between Section 660 and other federal criminal statutes based on the Commerce Clause.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: May 18, 1981

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 182—September Term, 1980

(Argued September 30, 1980 Decided January 22, 1981)

Docket No. 80-1213

UNITED STATES OF AMERICA,

Appellee,

—v.—

VINCENT E. MARINO,

Defendant-Appellant.

Before:

OAKES and NEWMAN, *Circuit Judges,* and
COFFRIN, *District Judge.**

Appeal from judgment of the United States District Court for the Southern District of New York, entered by Judge Charles E. Stewart, Jr. after a jury trial convicting

* Honorable Albert W. Coffrin, United States District Judge for the District of Vermont, sitting by designation.

appellant on charges related to violations of 18 U.S.C. § 660. Appellant appeals from his conviction on the ground that section 660 has no proper application to the conduct with which he was charged. He also appeals on the ground that the trial court erred in admitting certain evidence offered by the prosecution.

Judgment Affirmed.

HAROLD R. TYLER, JR., Esq., Patterson, Belknap, Webb & Tyler, New York, New York, (Frederick T. Davis, Esq., and Kenneth A. Caruso, Esq., of counsel), *for Defendant-Appellant.*

SCOTT W. MULLER, Esq., Assistant United States Attorney, (John S. Martin, Jr., Esq., United States Attorney for the Southern District of New York, Attorney Mary Jo White, Assistant United States Attorney, of counsel), *for Appellee.*

COFFRIN, *District Judge*:

Vincent E. Marino appeals from a judgment of conviction entered on May 22, 1980, after a three-week jury trial before Judge Stewart in the United States District Court for the Southern District of New York. The jury found Marino guilty on all four counts of an indictment charging him with conspiracy, 18 U.S.C. § 371, and aiding and abetting the embezzlement of funds of a common carrier,

18 U.S.C. §§ 2, 660. Judge Stewart sentenced Marino to a total of one year and one day's imprisonment.[1]

In arguing that his conviction should be reversed, Marino maintains that the provisions of 18 U.S.C. § 660 do not apply to the acts with which he was charged. In this connection, he contends that deficiencies in the indictment, the proof at trial, and the charge to the jury each provide grounds for reversal. He also objects to the admission of certain evidence at trial on the grounds of irrelevance, prejudice, and unfair surprise.

Marino was convicted for his part in an overbilling and kickback scheme involving two executives of the steamship company, Prudential Grace Lines, Inc. (Prudential). Prudential is a large American flag carrier engaged exclusively in foreign commerce. The executives of Prudential involved in the scheme were Keith Nelson, Director of Intermodal [container] Operations, and John Marano, an officer of the corporation and Executive-Vice President in charge of operations. At the time of the scheme, Marino was president and part owner of Marine Repair Services, Inc. (Marine Repair). Marine Repair is a Staten Island company engaged in the repair of maritime equipment including containers and the chassis on which the containers rest when they are carrying goods by land.

The kickback scheme began in July 1974 when Nelson decided to seek the repair and modification of approximately sixty-five of Prudential's container chassis in order to bring them into compliance with industry standards. Nelson conferred with Marano and then obtained bids for the work from Marine Repair and other compa-

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[1] Judge Stewart declared a mistrial of the case against Marino's co-defendant William O'Donnel after the jury was unable to reach a verdict concerning him. Criminal proceedings against O'Donnel were later terminated with the entry of a *nolle prosequi* order.

nies. Nelson and Marano accepted Marine Repair's bid for the work even though the bid was substantially higher than others which Nelson received. The evidence showed that Marino agreed to pay $900 per chassis in roughly equal shares to Marano, Nelson, and Anthony Scotto of the International Longshoremen's Union.[2]

Work began on the chassis in October 1974 and lasted until July 1975. During that period Marine modified approximately fifty-two chassis. Marine received payment for the work both through invoices submitted directly to Nelson for special rush payment and through a second set of invoices apparently submitted for the same work through routine billing channels. Nelson, Marano, and allegedly Scotto each received kickback payments; Nelson's payments alone exceeded $13,000. Nelson later pled guilty to tax charges arising from the unreported receipt of other kickback payments not involved in this case.

I. Applicability of 18 U.S.C. § 660.

18 U.S.C. § 660 is directed at the theft or embezzlement of funds of a common carrier by an executive or employee. The section provides in part that

> [w]hoever, being a president, director, officer or manager of any firm, association, or corporation engaged in commerce as a common carrier, or whoever, being an employee of such common carrier

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2 Marino was originally indicted as a co-defendant with Anthony Anastasio, Anthony Scotto, and Joseph Lacqua. The indictment charged Marino with violations of 29 U.S.C. § 186(a). The trial of Scotto and Anastasio was severed, Lacqua was also tried separately, and in December 1979 the government replaced the original counts against Marino with the four embezzlement and conspiracy counts on which he and O'Donnel were ultimately tried.

> riding in or upon any railroad car, motortruck, steamboat, vessel, aircraft or other vehicle of such carrier moving in interstate commerce, embezzles, steals, abstracts, or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

Marino raises several objections to his conviction under section 660. First, he claims that the indictment, proof at trial, and charge to the jury each failed to satisfy the statutory requirement that the embezzled funds arise or accrue from commerce. This argument has two parts. Marino argues that section 660 applies to the embezzlement of funds derived from transactions in interstate but not foreign commerce. He also contends that the statute requires that the embezzled funds derive directly from some specific, identifiable transaction in interstate commerce. Finally, Marino claims that the proof and charge to the jury did not satisfy the requirement that one of the principals in the scheme be an officer or manager of the common carrier.

A. Foreign Commerce

Section 660 clearly reaches the embezzlement by executives of funds accruing from either foreign or interstate commerce. When section 660 first appeared as section 9 of the Clayton Act in 1914, it applied only to executives and managers of firms "engaged in commerce as a com-

mon carrier" who embezzle money "arising or accruing from, or used in, such commerce." Clayton Act, ch. 323, § 9, 38 Stat. 733 (1914). The Clayton Act defines commerce (in 1914 as well as today) to include *both* foreign and interstate commerce. 15 U.S.C. § 12(a). This broad definition of commerce placed the embezzlement of funds arising or accruing from foreign as well as from interstate commerce within the scope of the 1914 version of section 660.

In 1940, section 9 of the Clayton Act became section 412 of Title 18. In 1948, Congress combined section 412 with 18 U.S.C. § 409(a)5, a provision aimed at combatting thefts of property from interstate shipments by employees of the carrier, in order to create section 660. The only reference in section 660 to *interstate* commerce comes from section 409(a)5. Employees prosecuted under section 409(a)5 and now under section 660 must be accused of stealing property while riding on a vehicle "moving in interstate commerce."

To apply the interstate movement requirement to the executive provision of section 660, however, would be plainly incorrect. Congress did not intend the re-codification of title 18 in 1948 to effect substantive changes in the scope and coverage of existing criminal statutes like those combined to form the modern section 660. *United States v. Cook*, 384 U.S. 257, 260 (1966). From 1914 to the present date, therefore, section 660 and its predecessors have applied to the embezzlement by executives of funds arising from either foreign or interstate commerce.

B. "Arising or accruing from, or used in, such commerce."

Marino also contends that section 660 requires that the embezzled funds must not only derive from interstate

commerce but from an identifiable transaction in interstate commerce as well. Marino argues that the requirement that the officer or manager embezzle funds "arising or accruing from, or used in, such commerce, in whole or in part" cannot have been satisfied in the indictment, proof, or jury charge because the fraudulent transactions were carried out entirely within the state of New York. He argues further that the funds used to make the fraudulent overpayments to Marine Repair were not the proceeds of an identifiable transaction in interstate commerce and thus failed to bring the fraud within the scope of section 660. In short, Marino's position is that the 'arising' requirement means either that the perpetration of the fraud must cross state lines or that the embezzled funds must be traced to some specific interstate transaction.

In divining the intended effect of the 'arising' requirement, the court looks to the legislative debate preceding the passage of section 9 of the Clayton Act in 1914. Section 9 as first proposed contained no 'arising' requirement at all. Sharp disagreement then broke out on the floor of the Senate concerning the constitutionality of the bill. Opponents of the measure viewed it as an invasion of an area of the criminal law traditionally left to the states. As Senator Stone of Missouri observed,

> The power of the Federal Government in the mere regulation of interstate commerce is wide and ample; but we are going to do now what we have not done before—we are going to authorize the Federal Government to intrude upon the States and indict officials and agents of state corporations and private firms and associations for the crime of larceny, of embezzlement, and other like offenses known to the statutes of every State. Think what will result!

51 Cong. Rec. 14038 (1914). The bill's proponents, on the other hand, were primarily concerned with remedying widespread scandal and abuse in the railroad industry. In their desire to eliminate fraud, especially watered stock schemes and the sale of railroad property to insiders for inadequate consideration, they had few objections to the imposition of federal penalties for criminal acts affecting interstate commerce even though those acts might already be illegal under state law.

In enacting section 9, Congress clearly rejected Stone's rather sweeping argument against concurrent state and federal criminal jurisdiction. The more narrow constitutional problem perceived by proponents and opponents of the bill alike concerned the effect of section 9 on commerce which was part interstate and part local in nature. Senator Chilton of West Virginia, for example, stated the problem and resolved it in favor of federal intervention regardless of any incidental effect on intrastate commerce.

> Simply because in a specific case the director [of a carrier] may not be an interstate instrument, or simply because one piece of freight in a car might not be interstate commerce, does not make the law invalid. We have the general power over interstate commerce, and because intrastate commerce gets in the way, or can not be always found out of the way, we need not surrender our powers.

51 Cong. Rec. 14038 (1914).

Other senators were more troubled than Chilton by the prospect of federal regulation of purely intrastate commerce. In an apparent attempt to put these doubts to rest, Senator Culberson of Texas proposed the 'arising' requirement as an amendment to section 9. In introducing

his amendment, Culberson quoted from the then recent decision of the Supreme Court in the Shreveport Rate Case, *Houston, East and West Texas Railway v. United States*, 234 U.S. 342 (1914), in which the Court permitted federal regulation of rates charged by intrastate carriers competing with interstate carriers. The gist of Culberson's remarks was that federal intervention in intrastate affairs was permitted by the commerce clause if the apparent encroachment was necessary for the adequate protection of interstate commerce. Culberson intended the 'arising' requirement to mean that although federal prosecution under section 9 could take place only if the fraud involved some funds derived from interstate commerce,

> if intrastate receipts were affected as well as interstate receipts, the statute would apply, nevertheless, but a conviction could be had, not with reference to intrastate trade or property, but with reference to that affected by or received from or arising out of or accruing from the conduct of interstate commerce as defined in this bill.

51 Cong. Rec. 14041 (1914).

Culberson's intention in proposing the amendment was not understood by some of the other senators. Senator Cummins of Texas, for example, questioned Culberson about whether the 'arising' requirement confined section 9 to actual cash receipts derived directly from railroad operations. Cummins believed that "if you are going to make the misapplication of some of the proceeds [of commerce] an offense we certainly ought to reach an improper diversion of the capital of a railway company or a common carrier as well as the earnings of a carrier." 51 Cong. Rec. 14041 (1914). Although the subsequent ex-

change between Cummins and Culberson is somewhat confused and ended abruptly with the introduction of unrelated business before the Senate, it is clear that Culberson anticipated that section 9 as amended would reach the embezzlement of capital as well as proceeds of an interstate carrier. After all, the abuses which prompted the bill in the first place, particularly the scandal surrounding the failure of the New York, New Haven and Hartford Railroad, greatly exceeded the mere theft of cash receipts.

The debate does not support Marino's position that the funds must be traced to a specific transaction in interstate commerce. Although some of section 9's most earnest proponents feared that a strict interpretation of the 'arising' requirement (very like that urged by Marino in this case) might come to restrict the usefulness of the statute, see remarks of Senator Nelson of Iowa, 51 Cong. Rec. 15942 (1914), the Senate debate read as a whole strongly indicates that the amendment was intended only to require that the embezzlement of funds have an effect on commerce sufficient to justify federal intervention under the Shreveport Rate Case. "Arise or accrue," then, should not be interpreted in a narrow accounting sense which would require tracing the funds to a particular transaction. Instead, Congress intended the 'arising requirement' to mean that the funds must be derived from or used in commerce in such a way that theft of the funds has an adverse effect on foreign or interstate commerce. The correct focus is on the connection between the funds of the common carrier and foreign or interstate commerce and not between the funds and some particular transaction in commerce.

The indictment under which Marino and O'Donnel were ultimately tried adopts much but not all of the

language of the 'arising' requirement. In all four counts Marino was charged with embezzling funds "arising and accruing from, and used in, in whole or in part, Prudential Lines, Inc.'s business as a firm engaged in commerce as a common carrier." In drawing up the indictment, the government relied on the single word "as" to satisfy the two separate statutory requirements that the carrier be engaged in commerce and that the embezzled funds bear the requisite relation to commerce. Although more precise draftsmanship charging that the funds and assets themselves bear some relation to interstate commerce beyond mere ownership by the common carrier would have been preferable, the indictment may be fairly read to charge that the funds were in fact derived from foreign or interstate commerce. The indictment describes Prudential as a firm "engaged in commerce as a common carrier in the steamship business." "Commerce," we believe, means for purposes of the indictment exactly what it means for purposes of section 660—interstate or foreign commerce. In this case, any money accruing from or used in Prudential's steamship business must be largely composed of funds which arise from or are used in foreign commerce and which therefore satisfy the jurisdictional requirements of section 660.

The proof at trial bears out this interpretation of the indictment. The government showed Prudential to be engaged exclusively in foreign commerce. The account from which Nelson made the overpayment was Prudential's principal checking account into which the firm deposited most of its revenues from foreign commerce. The presence in the account of some money derived from sources other than commerce would not taint the account for jurisdictional purposes since section 660 applies to funds derived either wholly or in part from interstate or foreign commerce.

The jury instructions followed the language of the indictment closely. The trial court read the pertinent provisions of section 660 to the jury and then discussed in some detail each element of the crime. The court instructed the jury that in order to satisfy the 'arising' requirement

> it is not necessary for the Government to prove that the very dollars, monies, or funds which were, according to the Government's contention, misapplied or converted to Nelson's use or the use of others, were at some point actually used by Prudential Lines in commerce. The Government need only show that the conversion or misapplication involved funds or accounts which included monies, such as operating income, arising or accruing from, or used in, in whole or in part, Prudential's business as a common carrier engaged in commerce.

This instruction, like the indictment, could have been more precise because the statute requires that the embezzled funds themselves be connected with foreign or interstate commerce, not that the funds be connected to a business which is engaged in commerce. In the present case, however, the distinction is of little practical consequence because it is clear from the testimony at trial that virtually all of Prudential's funds and assets are derived from and used in commerce. Accordingly, Marino has failed to demonstrate the presence of reversible error concerning the 'arising' requirement in either the indictment, the proof at trial, or the jury charge.

C. 'Manager' Requirement

In order to convict Marino under section 660, the government was required to prove that a president, direc-

tor, officer, or manager of Prudential participated in the fraud.[3] As a corporate officer of Prudential and Executive-Vice President in charge of operations, John Marano clearly qualified as an officer or manager for purposes of section 660. Marino, however, contends that the evidence at trial does not support a finding that Keith Nelson was also a manager. In addition, he claims that the jury charge concerning the definition of a manager was inadequate. Marino argues, therefore, that the faulty charge may have led the jury to convict Marino on the theory that Nelson (but not Marano) participated in the fraud. In the absence of sufficient evidence that Nelson was a manager, Marino's conviction would not be expressly predicated on a finding of wrongful acts by a carrier executive.

Marino's argument fails because both the proof at trial and the jury instructions regarding the manager requirement were entirely adequate. At trial Nelson was shown to have been an executive of some importance within Prudential at the time of the fraud. He supervised a staff of about twenty-five people and was responsible for the use and maintenance of all of Prudential's containers and related trucking and stevedoring equipment. Along with several other division heads, he reported directly to Marano who reported in turn to the president of the company.

Above all, Nelson's role in carrying out the fraud shows him to have been an individual exercising "a great deal of control over financial matters and policy decisions" and therefore posing a special threat to commerce justifying federal prosecution under section 660. *United*

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3 The employee provision of section 660 has no application in this case because it is limited to theft or embezzlement by employees actually riding in interstate commerce.

States v. Gregg, 612 F.2d 43, 49 (2d Cir. 1979). The initial decision to seek repair and modification of the obsolete containers came from Nelson and was subsequently approved by Marano. Although Marano was the Prudential executive involved in planning the kickback scheme at the outset, Nelson was largely responsible for putting the scheme into operation. In particular, Nelson was in a position at Prudential which enabled him to approve the unusual rush payment of inflated invoices from Marine Repair. In short, the government clearly met its burden of proof that Nelson exercised the authority of a manager during his tenure at Prudential and could satisfy the 'manager' requirement of section 660 even if the jury had determined that Marano was not involved in the fraud.

The jury instruction regarding the definition of the term "manager" was also adequate. The trial court instructed the jurors to apply the term in light of their everyday experience and to consider the titles, responsibilities, authority, and hierarchical positions of both Nelson and Marano. In the case of a term like 'manager' which has no specific technical meaning and is within the common understanding of the jurors, a special definition by the trial court is unnecessary. *See United States v. Johnson*, 575 F.2d 1347, 1357 (5th Cir. 1978), *cert. denied*, 440 U.S. 907 (1979). The trial court's instruction concerning the manager requirement, therefore, contains no reversible error.

II. Pre-Trial Disclosure and Admission into Evidence of the B Series of Invoices.

Much of the documentary evidence introduced at trial by the government consists of copies of invoices submitted by Marine to Prudential for work performed on

chassis and containers. The majority of these invoices, the so-called A series, were submitted directly to Nelson for special approval and rush payment. In addition, Marino submitted a second group of invoices, the B series, through ordinary billing channels at Prudential. Prudential then seems to have paid both the A and the B series of invoices. On appeal Marino objects to the introduction of the B series on grounds of unfair surprise, prejudice, and irrelevance.

A. Unfair Surprise

Marino claims that the government's failure to disclose in a timely fashion its intention of introducing the B series hindered his defense because his attorney had no adequate opportunity to prepare a means of countering the effect of the B series. The record, however, simply does not support Marino's argument.

Several weeks before trial the government gave Marino's attorney access to a collection of documents (between one and six file drawers according to various representations by counsel at trial) which included the B series as well as other documents used by the government in preparation for trial. The government notified Marino's attorney that some of the documents in the collection might be offered into evidence. Marino concedes that by making the B series available in this manner, the government complied with the technical requirements of Fed. R. Crim. P. 16(a)(1)(C) which governs pretrial discovery of documents and tangible objects. He contends, however, that the government surprised him unfairly because he and his attorney were not told that the B series would be offered into evidence until shortly before the close of the government's case-in-chief.

The record indicates that both the letter and the spirit of Fed. R. Crim. P. 16 were fully satisfied in this case. The collection of documents made available to Marino before trial, while extensive, does not seem to have exceeded the capacity of an attorney to read and study in preparation for a major trial. The B series, moreover, apparently came to the government from Marine Repair's files and concerns business transactions in which Marino was directly involved. Finally, Marino and his attorney received a special continuance in the midst of trial to give them an opportunity for preparation concerning the B series. In short, the defense received fair notice of the existence of documents, including the B series, which the government might use at trial, an opportunity to review these documents before the start of trial, and a special opportunity *in medias res* to review copies of the B series before putting on its own case. Marino has shown no unfair surprise which justifies reversal on appeal.

B. Relevance and Prejudice

Marino also contends that the admission of the B series was prejudicial and the documents irrelevant because the B series indicates only that Marine Repair may have engaged in a second, quite separate fraud involving billing Prudential twice for the same services. The record indicates, however, that the B series was used at trial by the government for a relevant purpose which outweighs the possible prejudicial effect on the jury.

The A series invoices submitted to Nelson for rush payment are not rich in descriptive detail. In most cases, they contain an amount for labor and a single charge for parts of about $650 which is attributed to a front and rear twist lock assembly. The government introduced testi-

mony at trial that the four necessary twist locks should have cost no more than thirty-five dollars each. In the course of its closing argument, the government argued to the jury that the $650 charges for parts in the A series invoices were grossly inflated and a mere cover for money intended for Nelson, Marano, and Scotto.

The B series bears out this claim of inflation. The invoices in this series contain lengthy itemized lists of relatively inexpensive parts typically costing about $400 per chassis. Charges for twist locks do not appear on the B series invoices. An isolated and extremely high charge for twist locks in an A series invoice and a long list of charges in the matching B series invoice for a variety of parts needed to repair the same chassis fairly tends to show that the isolated charge for twist locks concealed the fraudulent transfer of money from Prudential to Marine Repair.

Although the government suggested in its closing that Marine Repair may have engaged in double-billing, that argument was not improper. In the absence of the B series, one of the puzzles in this case would have been how Marine Repair could afford to kickback nearly half the amount paid through the A series of invoices for the repair of each chassis. An answer suggested by the B series is that Marine Repair could afford such largesse because it was collecting twice for each chassis it repaired. Marino and O'Donnel were not on trial for concocting such a scheme, but it was not error to permit the jury to consider the part such double-billing might have played in making possible the operation of the kickback scheme for which Marino and O'Donnel were indicted.

In short, the B series was highly probative and relevant. Any prejudice stemming from the jury's discovery that Marino and his company may have been engaged in a

certain amount of disgraceful behavior not charged in the indictment was more than offset by the light the B series cast on the means Marino, Nelson, and Marano employed to work the kickback scheme. Admission of the B series, therefore, was entirely proper.

The judgment of conviction is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

FILED: January 22, 1981
A. Daniel Fusaro, *Clerk*

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-second day of January, one thousand nine hundred and eighty-one.

Present: HON. JAMES L. OAKES,
HON. JON O. NEWMAN,
Circuit Judges

HON. ALBERT W. COFFRIN,
District Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. VINCENT MARINO, *Defendant-Appellant.*	80-1213

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in accordance with the opinion of this court.

A. DANIEL FUSARO, *Clerk*

/s/ Edward J. Guardaro, *Deputy Clerk*

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED: March 18, 1981
A. Daniel Fusaro, *Clerk*

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 18th day of March, one thousand nine hundred and eighty-one.

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. VINCENT MARINO, *Defendant-Appellant*	No. 80-1213

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the defendant-appellant, Vincent Marino,

Upon consideration by the panel that heard the appeal it is

Order that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge on the panel that heard the appeal and that no such judge has requested that a vote be taken thereon.

/s/ A. DANIEL FUSARO, *Clerk*

§ 660. *Carrier's funds derived from commerce; State prosecutions*

Whoever, being a president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, or whoever, being an employee of such common carrier riding in or upon any railroad car, motor-truck, steamboat, vessel, aircraft or other vehicle of such carrier moving in interstate commerce, embezzles, steals, abstracts, or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

The offense shall be deemed to have been committed not only in the district where the violation first occurred but also in any district in which the defendant may have taken or had possession of such moneys, funds, credits, securities, property or assets.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, v. VINCENT MARINO and WILLIAM O'DONNEL, *Defendants.*	INDICTMENT SSS 79 Cr. 32

COUNT ONE

The Grand Jury charges:

INTRODUCTION

1. At all times relevant to this Indictment, the defendants VINCENT MARINO and WILLIAM O'DONNEL were executives of Marine Repair Services, Inc., 3551 Richmond Terrace, Staten Island, New York. Marine Repair Services, Inc. is a marine service and repair company and is a successor company to Marine Trailers, Inc., 3551 Richmond Terrace, Staten Island, New York.

2. Prudential Lines, Inc., One World Trade Center, New York, New York (formerly Prudential-Grace Lines, Inc., One New York Plaza, New York, New York and hereinafter referred to as "Prudential Lines"), at all times relevant to this Indictment, was a firm and corporation engaged in commerce as a common carrier in the steamship business.

3. John Marano, at all times relevant to this Indictment, was the Executive Vice-President of Operations and an officer and Director of Prudential Lines.

4. Keith Nelson, at all times relevant to this Indictment, was the Director of Intermodal Operations and a manager of Prudential Lines.

THE CONSPIRACY

5. From in and around August 1974 to in and around February 1976, in the Southern District of New York and elsewhere, the defendants VINCENT MARINO and WILLIAM O'DONNEL and Keith Nelson and John Marano (named herein as co-conspirators but not as defendants), together with others known and unknown to the Grand Jury, did unlawfully, wilfully and knowingly conspire and agree together and with each other to embezzle, steal, abstract, wilfully convert to their own use, and wilfully misapply and permit to be misapplied moneys, funds, credits, securities, properties and assets of Prudential Lines arising and accruing from, and used in, in whole and in part, Prudential Lines' business as a firm and corporation engaged in commerce as a common carrier, in violation of Title 18, United States Code, Section 660.

MEANS OF THE CONSPIRACY

6. Among the means by which the defendants VINCENT MARINO AND WILLIAM O'DONNEL and their co-conspirators would and did carry out the conspiracy was the following:

(a) The defendants VINCENT MARINO and WILLIAM O'DONNEL would and did submit to Prudential Lines inflated invoices for refurbishing and repair work which the defendants' co-conspirators John Marano and Keith Nelson authorized to be performed on certain Prudential Lines container chassis and would and did receive in payment various Prudential Lines checks payable to Marine Repair Services, Inc.

(b) The defendants VINCENT MARINO and WILLIAM O'DONNEL would and did then kick-back to other co-conspirators including Keith Nelson and John Marano substantial amounts of money in the form of checks and cash.

OVERT ACTS

In furtherance of the conspiracy and to effect its objects, the following overt acts were committed by members of the conspiracy in the Southern District of New York and elsewhere.

1. In and around September, 1974 the defendant VINCENT MARINO and KEITH NELSON had a conversation concerning the refurbishing of certain Prudential Lines container chassis by Marine Repair Services, Inc.

2. On or about November 12, 1974 the defendant VINCENT MARINO submitted and caused to be submitted to Prudential Lines on behalf of Marine Repair Services, Inc. various invoices for container chassis refurbishing work in the total amount of $23,814.00.

3. On or about November 25, 1974 the defendant VINCENT MARINO deposited and caused to be deposited to an account of Marine Repair Services, Inc. a Prudential Lines check in the amount of $23,814.00.

4. On or about November 27, 1974 the defendants VINCENT MARINO and WILLIAM O'DONNEL delivered and caused to be delivered to Keith Nelson a Marine Repair Services, Inc. check payable to Container Sales, Ltd. in the amount of $2,325.00.

5. From on or about November 29, 1974 to on or about December 6, 1974 the defendant VINCENT MARINO submitted and caused to be submitted to Prudential Lines on behalf of Marine Repair Services, Inc. various invoices for container chassis refurbishing work in the total amount of $44,074.80.

6. On or about December 20, 1974 the defendant VINCENT MARINO negotiated and caused to be negotiated a Prudential Lines check payable to Marine Repair Services, Inc. in the amount of $20,374.20 which was in partial payment of the invoices referred to in overt act number 5.

7. On or about January 2, 1975 the defendant VINCENT MARINO negotiated and caused to be negotiated a Prudential Lines check payable to Marine Repair Services, Inc. in the amount of $23,700.60 which was the final payment on the invoices referred to in overt act number 5.

8. On or about January 16, 1975 the defendant VINCENT MARINO delivered and caused to be delivered to Keith Nelson a Marine Repair Services, Inc. check payable to Container Sales, Ltd. in the amount of $4,985.00.

9. On or about February 6, 1975 the defendant VINCENT MARINO submitted and caused to be submitted to Prudential Lines on behalf of Marine Repair Services, Inc. various invoices for container chassis refurbishing work in the total amount of $23,700.60.

10. On or about February 24, 1975 the defendant VINCENT MARINO negotiated and caused to be negotiated a Prudential Lines check payable to Marine Repair Services, Inc. in the amount of $23,700.60.

11. On or about February 28, 1975 the defendant WILLIAM O'DONNEL delivered and caused to be delivered to Keith Nelson a Marine Trailers, Inc. check payable to Container Sales, Ltd. in the amount of $2,840.00.

12. On or about June 3, 1975 the defendant VINCENT MARINO submitted and caused to be submitted to Prudential Lines on behalf of Marine Repair Services, Inc. various invoices for container chassis refurbishing work in the total amount of $25,855.20.

13. On or about July 8, 1975 the defendant WILLIAM O'DONNEL delivered and caused to be delivered to Keith Nelson a Marine Trailers, Inc. check payable to Container Sales, Ltd. in the amount of $3,100.00.

14. On or about July 14, 1975 the defendant VINCENT MARINO deposited and caused to be deposited to an account of Marine Repair Services, Inc. a Prudential Lines check in the amount of $25,855.20.

15. On or about July 29, 1975 the defendant VINCENT MARINO delivered to John Marano a sum of cash for John Marano and another co-conspirator.

(Title 18, United States Code, Section 371).

COUNT TWO

The Grand Jury further charges:

1. The allegations contained in Paragraphs 1-4 of Count One of this Indictment are hereby repeated and realleged as if fully set forth herein.

2. In and around December 17-24, 1974, in the Southern District of New York, the defendant VINCENT MARINO, Keith Nelson and John Marano did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, and wilfully misapply and permit to be misapplied monies, funds, credits, securities, properties and assets of Prudential Lines, Inc. arising and accruing from, and used in, in whole and in part, Prudential Lines, Inc.'s business as a firm and corporation engaged in commerce as a common carrier, to wit, kick-backs of substantial portions of the moneys represented by two Prudential Lines checks totalling approximately $44.074.80.

(Title 18, United States Code, Sections 660 and 2).

COUNTS THREE THROUGH FOUR

The Grand Jury further charges:

1. The allegations contained in Paragraphs 1-4 of Count One of this Indictment are hereby repeated and realleged as if fully set forth herein.

2. On or about the dates set forth below in the Southern District of New York, the defendants VINCENT MARINO and WILLIAM O'DONNEL, Keith Nelson and John Morano did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, and wilfully misapply and permit to be misapplied monies, funds, credits, securities, properties and assets of Prudential Lines, Inc. arising and accruing from, and used in, in whole and in part, Prudential Lines, Inc.'s business as a firm and corporation engaged in commerce as a common carrier, to wit, kick-backs of substantial portions of the monies represented by the Prudential Lines checks set forth below.

Count	Date	Payee	Amount of Check
Three	February 21, 1975	Marine Repair Services, Inc	$23,700.60 .
Four	July 11, 1975	Marine Repair Services, Inc	$25,855.20

(Title 18, United States Code, Sections 660 and 2).

FOREPERSON

ROBERT B. FISKE, JR.
United States Attorney

FILED: April 8, 1976
Jane P. Gordon, *Clerk*

IN THE DISTRICT COURT OF
THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA v. HERMAN WENDELL FISHER	Cr. No. 76-18-E (18 USC 660) INDICTMENT

The Grand Jury charges:

COUNT I

On or about the 3rd day of August, 1975, at Cusseta, Alabama, in the Middle District of Alabama, HERMAN WENDELL FISHER being an employee, that is, a truck driver for Caddo Moving and Storage Company, a company engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Shreveport, Louisiana to Lindale, Georgia, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $1,732.73 of the monies and property of said carrier arising and occurring from such commerce, which said monies and property had come into the possession of HERMAN WENDELL FISHER by virtue of his employment as agent of the said Caddo Moving and Storage Company, in violation of Title 18, Section 660, United States Code.

A TRUE BILL:

.....

Foreman

IRA DE MENT
UNITED STATES ATTORNEY

/s/ ROBERT C. WATSON
Assistant United States Attorney

CRC 76-0080(E)

FILED: April 9, 1980
William L. Whittaker, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA *Plaintiff,* v. TEDDY RAY ARNOLD, *Defendant.*	CRIMINAL NO.: VIOLATION: 18 U.S.C.§ 660 Embezzlement of Funds by Officer of Rail Common Carrier

INDICTMENT

COUNT ONE: 18 U.S.C. § 660

On or about the 3rd day of June 1975, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the sum of $1,845.00, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT TWO: 18 U.S.C. § 660

On or about the 26th day of September 1975, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier,

did willfully and knowingly embezzle, steal, and convert to his own use the sum of $4,160.72, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT THREE: 18 U.S.C. § 660

On or about the 1st day of December 1975, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the sum of $3,875.00, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT FOUR: 18 U.S.C. § 660

On or about the 1st day of November 1976, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the sum of $5,498.90, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT FIVE: 18 U.S.C. § 660

On or about the 30th day of March 1977, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his

own use the sum of $3,765.92, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT SIX: 18 U.S.C. § 660

On or about the 2nd day of June 1977, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the sum of $3,685.42, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT SEVEN: 18 U.S.C. § 660

On or about the 22nd day of June 1977, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the sum of $3,526.94, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT EIGHT: 18 U.S.C. § 660

On or about the 8th day of July 1977, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the the sum of $2,317.51, of moneys and property of

said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT NINE: 18 U.S.C. § 660

On or about the 4th day of October 1977, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the sum of $3,665.90, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT TEN: 18 U.S.C § 660

On or about the 2nd day of November 1977, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the sum of $2,427.80, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT ELEVEN: 18 U.S.C. § 660

On or about the 20th day of March 1978, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the sum of $2,633.23, of moneys and property of said

carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

COUNT TWELVE: 18 U.S.C. § 660

On or about the 19th day of April 1978, in the City and County of San Francisco, State and Northern District of California,

TEDDY RAY ARNOLD,

being an officer of the Southern Pacific Transportation Company, a company engaged in commerce as a common carrier, did willfully and knowingly embezzle, steal, and convert to his own use the sum of $1,798.72, of moneys and property of said carrier, arising and accruing from such commerce, in violation of Title 18, United States Code, Section 660.

A True Bill.

FOREPERSON
04/09/80

/s/ G. WILLIAM HUNTER
United States Attorney

FILED: June 13, 1977

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA v. ROBERT ELWOOD DODSON	CASE No. 72-143- Cr.T K

The Grand Jury charges that:

COUNT ONE

On or about November 20, 1969, at St. Petersburg, Florida, in the Middle District of Florida,

ROBERT ELWOOD DODSON

being an employee, that is, a driver of Templeton Moving and Storage Co., Inc., Pontiac, Michigan, a corporation engaged in commerce as a common carrier, riding in and upon a motor truck of such carrier moving in interstate commerce from Lyndhurst, Ohio to St. Petersburg, Florida, wilfully and knowingly did embezzle, steal and convert to his own use monies of the said carrier arising and accruing from such commerce, to wit, the sum of $437.93; in violation of Title 18, Section 660, United States Code.

COUNT TWO

On or about November 20, 1969, at Bradenton, Florida, in the Middle District of Florida,

ROBERT ELWOOD DODSON

being an employee, that is, a driver of Templeton Moving and Storage Co., Inc., Pontiac, Michigan, a corporation engaged in commerce as a common carrier, riding in and upon a motor truck of such carrier moving in interstate commerce from

Youngstown, Ohio to Bradenton, Florida, wilfully and knowingly did embezzle, steal and convert to his own use monies of the said carrier arising and accruing from such commerce, to wit, the sum of $183.82; in violation of Title 18, Section 660, United States Code.

COUNT THREE

On or about November 26, 1969, at Lake Alfred, Florida, in the Middle District of Florida,

ROBERT ELWOOD DODSON

being an employee, that is, a driver of Templeton Moving and Storage Co., Inc., Pontiac, Michigan, a corporation engaged in commerce as a common carrier, riding in and upon a motor truck of such carrier moving in interstate commerce from Pontiac, Michigan, to Lake Alfred, Florida, wilfully and knowingly did embezzle, steal and convert to his own use monies of the said carrier arising and accruing from such commerce, to wit, the sum of $132.74; in violation of Title 18, Section 660, United States Code.

A TRUE BILL

.....
FOREMAN

JOHN L. BRIGGS
United States Attorney

/s/ HUGH N. SMITH
Assistant United States Attorney

FILED: April 12, 1978
Ben H. Carter, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

UNITED STATES OF AMERICA vs. RONNIE NATHAN JOHNSON, JOSEPH H. STONE, JR., LUM T. TAYLOR AND JAMES M. WILLIAMS	CRIMINAL INDICTMENT No. 78-12—R

THE GRAND JURY CHARGES:

COUNT ONE

That, on or about the 7th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Section 660.

COUNT TWO

That, on or about the 14th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated

moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT THREE

That, at or about 2:30 A.M. on the 15th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant RONNIE NATHAN JOHNSON, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT FOUR

That, on or about the 15th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant, JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT FIVE

That, at or about 10:25 P.M. on the 15th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant RONNIE NATHAN JOHNSON, who then was an employee of a corporation engaged in commerce as a common carrier, namely Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT SIX

That, at or about 1:25 A.M. on the 16th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce betweeen Tennessee and Georgia, did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Section 660.

COUNT SEVEN

That, on or about the 16th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant RONNIE NATHAN JOHNSON, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines,

Incorporated moving in interstate commerce between Tennessee and Georgia, did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Section 660.

COUNT EIGHT

That, at or about 10:15 P.M. on the 16th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT NINE

That, on or about the 16th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant LUM T. TAYLOR, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT TEN

That, at or about 1:29 A.M. on the 17th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant LUM T. TAYLOR, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT ELEVEN

That, at or about 1:29 A.M. on the 17th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT TWELVE

That, at or about 9:20 P.M. on the 17th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant LUM T. TAYLOR, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines,

Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT THIRTEEN

That, at or about 10:07 P.M. on the 17th day of November, 1977, in the Northern District of Georgia and elsewhere, the defendant JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT FOURTEEN

That, on or about the 9th day of January, 1978, in the Northern District of Georgia and elsewhere, the defendant JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT FIFTEEN

That, on or about the 22nd day of January, 1978, in the Northern District of Georgia and elsewhere, the defendant JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

COUNT SIXTEEN

That, on or about the 23rd day of February, 1978, in the Northern District of Georgia and elsewhere, the defendant LUM T. TAYLOR, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, did embezzle, steal, abstract and wilfully and knowingly convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Section 660.

COUNT SEVENTEEN

That, on or about the 4th day of March, 1978, in the Northern District of Georgia and elsewhere, the defendant JAMES M. WILLIAMS, who then was an employee of a corporation engaged in commerce as a common carrier, namely, Yellow Freight Lines, Incorporated, and who was riding in and upon a motortruck of Yellow Freight Lines, Incorporated moving in interstate commerce between Tennessee and Georgia, aided and abetted by the defendant JOSEPH H. STONE, JR., did embezzle, steal, abstract and wilfully and knowingly

convert to his own use and the use of others property and assets of Yellow Freight Lines, Incorporated used in such commerce, in whole or in part, to wit, diesel fuel, in violation of Title 18, United States Code, Sections 660 and 2.

A True Bill

/s/ GEORGE C. WARD
Foreman

WILLIAM L. HARPER
United States Attorney

RICHARD WILE
Assistant United States Attorney

FILED: November 15, 1978

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
EASTERN DIVISION

UNITED STATES OF AMERICA vs. THOMAS C. McCALL	78 CR 843 VIOLATION: TITLE 18, UNITED STATES CODE, SECTION 660 AND TITLE 40, UNITED STATES CODE, SECTION 20(7)(B)

THE SPECIAL MARCH 1978 GRAND JURY CHARGES:

From on or about October 13, 1976 to and including December 16, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. Mc CALL, JR.,

defendant herein, knowingly and wilfully did make and cause to be made false entries in the accounts of a book of accounts kept by the Illinois Central Gulf Railroad Company, a carrier regulated by the Interstate Commerce Commission, by causing to be entered and recorded certain entries in said carrier's Overcharge Reserve Fund Account which purported to show that certain checks totalling approximately $80,273.05 and drawn on the bank accounts of said carrier were used to pay expenses incurred in the business of said carrier, when, in fact, said checks were not used for such purpose;

In violation of Title 49, United States Code, Section 20(7)(b).

COUNT TWO

THE SPECIAL MARCH 1978 GRAND JURY CHARGES:

On or about October 13, 1976, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MC CALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft No. 380257, dated October 13, 1976, in the amount of approximately $5,000.00 payable to Meyer Industries;

In violation of Title 18, United States Code, Section 660.

COUNT THREE

THE SPECIAL MARCH 1978 GRAND JURY CHARGES:

On or about October 22, 1976, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MC CALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft, No. 381122, dated October 22, 1976, in the amount of approximately $5,000.00 payable to Meyer Industries;

In violation of Title 18, United States Code, Section 660.

COUNT FOUR

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about December 3, 1976, at Chicago, in the Northern District of Illinois, Eastern Division,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft, No. 383298, dated December 3, 1976, in the amount of approximately $8,400.00 payable to Meyer Industries;

In violation of Title 18, United States Code, Section 660.

COUNT FIVE

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about January 24, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft, No. 385592, dated January 24, 1977; in the amount of approximately $6,420.00 payable to Meyer Industries;

In violation of Title 18, United States Code, Section 660.

COUNT SIX

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about April 22, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract

and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft No. 390420, dated April 22, 1977, in the amount of approximately $7,660.00 payable to Meyer Industries;

In violation of Title 18, United States Code, Section 660.

COUNT SEVEN

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about June 10, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft No. 392768, dated June 10, 1977, in the amount of approximately $7,860.00 payable to Meyer Industries;

In violation of Title 18, United States Code, Section 660.

COUNT EIGHT

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about June 13, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft, No. 392770, dated June 13,

1977, in the amount of approximately $6,840.00 payable to T & T Industries;

In violation of Title 18, United States Code, Section 660.

COUNT NINE

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about June 17, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft, No. 392983, dated June 17, 1977, in the amount of approximately $7,865.00 payable to T & T Industries;

In violation of Title 18, United States Code, Section 660.

COUNT TEN

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about July 15, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft, No. 394040, dated July 15, 1977, in the amount of approximately $5,620.00 payable to T & T Industries;

In violation of Title 18, United States Code, Section 660.

COUNT ELEVEN

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about August 1, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft, No. 394834, dated August 1, 1977, in the amount of approximately $4,860.00 payable to T & T Industries;

In violation of Title 18, United States Code, Section 660.

COUNT TWELVE

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about September 1, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft, No. 396347, dated September 1, 1977, in the amount of approximately $4,865.50 payable to T & T Industries;

In violation of Title 18, United States Code, Section 660.

COUNT THIRTEEN

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about November 22, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely Illinois Central Gulf Railroad Company Draft, No. 396421, dated November 22, 1977, in the amount of approximately $5,244.45 payable to T & T Industries;

In violation of Title 18, United States Code, Section 660.

COUNT FOURTEEN

The SPECIAL MARCH 1978 GRAND JURY charges:

On or about December 16, 1977, at Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS C. MCCALL, JR.,

defendant herein, being an officer and manager of the Illinois Central Gulf Railroad Company, a corporation engaged in commerce, as a common carrier, did embezzle, steal, abstract and wilfully misapply the money, funds and assets of the Illinois Central Gulf Railroad, in whole or in part arising and accruing from interstate commerce, namely, Illinois Central Gulf Railroad Company Draft, No. 396438, dated December 16, 1977, in the amount of approximately $4,638.10 payable to T & T Industries;

In violation of Title 18, United States Code, Section 660.

A True Bill

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Foreperson

.....

United States Attorney

WJC/jar/wpc

FILED: February 18, 1977
Arthur G. Johnson, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA v. LAVERNE JOSEPH DORIS	No. 77-20024-01 (18 U.S.C. 660)

INDICTMENT

The Grand Jury charges:

On or about the 27th day of September, 1976, in the District of Kansas,

LAVERNE JOSEPH DORIS

being an employee, that is, a truck driver for Morehouse Moving and Storage Company, a business organization engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Ankeny, State of Iowa, to Lenexa, State of Kansas, wilfully and knowingly did embezzle, steal and convert to his own use the approximate sum of $1,128.34 of the moneys and property of said carrier, arising and accruing from such commerce, which said moneys and property had come into the possession of LAVERNE JOSEPH DORIS by virtue of his employment as agent of the said Morehouse Moving and Storage Company, all in violation of 18 U.S.C. 660.

A True Bill

Foreman

Dated: February 18, 1977

E. EDWARD JOHNSON
United States Attorney
District of Kansas

/s/ DOUGLAS B. COMER
Assistant U.S. Attorney

JOM:MSC

FILED: February 7, 1980
Arthur G. Johnson, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA *Plaintiff,* v. ROY LEE SMITH *Defendant.*	CRIMINAL NO. 80-20015-01

INFORMATION

The United States Attorney charges:

During October, 1979, in the District of Kansas, and elsewhere:

ROY LEE SMITH,

being an employee of Stevens United Van Lines, a corporation engaged in commerce as a common carrier, while riding in and upon a motortruck of such carrier moving in interstate commerce, did embezzle and steal moneys and funds arising from such commerce, and did willfully and knowingly convert the same to his own use, in violation of 18 U.S.C. 660.

JAMES P. BUCHELE
United States Attorney

/s/ JOHN OLIVER MARTIN
Assistant United States Attorney

FILED: September 24, 1979
Jesse W. Grider, *Clerk*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA v. SAUL WILLIAMS	INDICTMENT No. Cr 79-00127-01-C (18 U.S.C. § 660)

The Grand Jury Charges:

COUNT 1

On or about the 21st day of August, 1978, in the Western District of Kentucky, SAUL WILLIAMS, being an employee, that is, a truck driver for Masterson Moving and Storage Company, a business entity engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Louisville, State of Kentucky, to Phoenix, State of Arizona, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $2,783.40, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of SAUL WILLIAMS by virtue of his employment as agent of the said Masterson Moving and Storage Company.

In violation of Section 660, Title 18, United States Code.

The Grand Jury further charges:

COUNT 2

On or about the 28th day of August, 1978, in the Western District of Kentucky, SAUL WILLIAMS, being an employee, that is, a truck driver for Masterson Moving and Storage Company, a business entity engaged in commerce as a common carrier, and while riding in and upon a motor truck of

such carrier moving in interstate commerce from Louisville, State of Kentucky, to Atoka, State of Tennessee, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $621.14, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of SAUL WILLIAMS by virtue of his employment as agent of the said Masterson Moving and Storage Company.

In violation of Section 660, Title 18, United States Code.

The Grand Jury further charges:

COUNT 3

On or about the 1st day of September, 1978, in the Western District of Kentucky, SAUL WILLIAMS, being an employee, that is a truck driver for Masterson Moving and Storage Company, a business entity engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Louisville, State of Kentucky, to Orlando, State of Florida, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $175.65, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of SAUL WILLIAMS by virtue of his employment as agent of the said Masterson Moving and Storage Company.

In violation of Section 660, Title 18, United States Code.

The Grand Jury further charges:

COUNT 4

On or about the 25th day of September, 1978, in the Western District of Kentucky, SAUL WILLIAMS, being an employee, that is, a truck driver for Masterson Moving and Storage Company, a business entity engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Louisville, State of Kentucky, to Phoenix, State of Arizona, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $960.04, of the moneys and property of

said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of SAUL WILLIAMS by virtue of his employment as agent of the said Masterson Moving and Storage Company.

In violation of Section 660, Title 18, United States Code.

The Grand Jury further charges:

COUNT 5

On or about the 5th day of October, 1978, in the Western District of Kentucky, SAUL WILLIAMS, being an employee, that is, a truck driver for Masterson Moving and Storage Company, a business entity engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Louisville, State of Kentucky, to Dallas, State of Texas, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $528.13, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of SAUL WILLIAMS by virtue of his employment as agent of the said Masterson Moving and Storage Company.

In violation of Section 660, Title 18, United States Code.

The Grand Jury further charges:

COUNT 6

On or about the 10th day of October, 1978, in the Western District of Kentucky, SAUL WILLIAMS, being an employee, that is, a truck driver for Masterson Moving and Storage Company, a business entity engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Louisville, State of Kentucky, to Conoga Park, State of California, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $1,865.99, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of SAUL WILLIAMS by virtue of his employment as agent of the said Masterson Moving and Storage Company.

In violation of Section 660, Title 18, United States Code.

The Grand Jury further charges:

COUNT 7

On or about the 12th day of October, 1978, in the Western District of Kentucky, SAUL WILLIAMS, being an employee, that is, a truck driver for Masterson Moving and Storage Company, a business entity engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Louisville, State of Kentucky, to Reseda, State of California, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $906.15, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of SAUL WILLIAMS by virtue of his employment as agent of the said Masterson Moving and Storage Company.

In violation of Section 660, Title 18, United States Code.

A True Bill.

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Foreman

/s/ ALBERT JONES
United States Attorney

FILED: May 14, 1976
Henry R. Hanssen, *Clerk*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff,* vs. HIRAM DAVID MASSIE, *Defendant.*	CR 3-76-321 Criminal Number 6-80636 VIO: Title 18, Section 660 U.S.C.

INDICTMENT

THE GRAND JURY CHARGES:

That on or about December 29, 1975, in the Eastern District of Michigan, HIRAM DAVID MASSIE, being an employee, that is, a truck driver for C & C Transportation, a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Phoenix, Arizona to Detroit, Michigan, wilfully and knowingly did embezzle, steal and convert to his own use the sum of Eight Hundred and Sixty-Eight Dollars ($868.00), of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of HIRAM DAVID MASSIE by virtue of his employment as agent of the said C & C Transportation; in violation of Title 18, Section 660 United States Code.

This is a True Bill

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Foreman

RALPH B. GUY, JR.
United States Attorney

/s/ GORDON S. GOLD
Assistant U.S. Attorney

Dated: 5/13/76

FILED: April 13, 1978
Henry R. Hanssen, *Clerk*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff,* vs. JOHN DOUGLAS FINNERTY, *Defendant.*	CR 78-187PHX CRIMINAL NO: 78-20027 VIO: TITLE 18, U.S.C., § 660 (Embezzlement from a common carrier)

INDICTMENT

THE GRAND JURY CHARGES:

On or about July 8, 1977 in the Eastern District of Michigan, Northern Division, JOHN DOUGLAS FINNERTY, defendant herein, while being an employee of Stevens Van Lines, a common carrier, and while rinding [sic] in and on a motor truck of said carrier, delivered goods moving in interstate commerce from Houstin [sic], Texas to Adamsville, Tennessee, wilfully embezzled to his own use approximately One Thousand Eight Hundred ($1,800.00) Dollars of the monies of said carrier arising and occurring from such commerce which came into his possession by virtue of said employment, in violation of Title 18, United States Code, § 660.

This Is A True Bill.

Foreman

JAMES K. ROBINSON
United States Attorney

/s/ J. BRIAN MCCORMICK (P 17334)
Assistant United States Attorney

Dated: April 13, 1978

FILED: April 14, 1972

UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff,* vs. JOSEPH ARTHUR MAURO, *Defendant.*	No. G-134-72, Cr. INDICTMENT

The Grand Jury charges:

COUNT 1

That on or about the 17th day of August, 1971, in the Western District of Michigan,

JOSEPH ARTHUR MAURO,

a truck driver, under contract to American Red Ball Transit Company, a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Houston, State of Texas, to Muskegon, State of Michigan, wilfully and knowingly did embezzle, steal and convert to his own use the sum of Six Hundred Thirty-seven and 05/100 ($637.05) Dollars of the moneys and property of said carrier, arising and occuring from such commerce, which said moneys and property had come into the possession of said Joseph Arthur Mauro by virtue of his acting as agent of the said American Red Ball Transit Company.

18 U.S.C. § 660

A True Bill

/s/ EDWARD P. WILBUR III

/s/ JOHN MILANOWSKI
United States Attorney

FILED: April 6, 1978
Harry A. Seiban, *Clerk*

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

UNITED STATES OF AMERICA v. ROBERT EUGENE HANNER	INDICTMENT (18 U.S.C. § 660)

THE UNITED STATES GRAND JURY CHARGES THAT:

On or about the 31st day of August, 1977, in the State and District of Minnesota, the defendant,

ROBERT EUGENE HANNER,

being an employee, that is, a truck driver for Barber Moving and Storage, Rapid City, South Dakota, an authorized agent and carrier for United Van Lines, Incorporated, a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck of Barber Moving and Storage, which was under contract to United Van Lines, Incorporated, and while such carrier was moving in interstate commerce from Redmond, State of Washington, to Red Wing, State of Minnesota, wilfully and knowingly did embezzle, steal, and convert to his own use the sum of $2,306.60 of the monies and property of said common carrier and their authorized agent, arising and occurring from such commerce, which said monies and property had come into the possession of Robert Eugene Hanner by virtue of his employment as agent of the said Barber Moving and Storage and United Van Lines, Incorporated; in violation of Title 18, United States Code, Section 660.

A True Bill

.....

Foreman

/s/ MEL DICKSTEIN
Ass't United States Attorney

FILED: May 10, 1978
Norman L. Gillespie, *Clerk*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DISTRICT

UNITED STATES OF AMERICA v. GEORGE RUSSELL FLEMING	CRIMINAL NO. CRG78-42 (18 USC 660) (18 USC 2312)

INDICTMENT

The Grand Jury charges that:

COUNT ONE

Beginning on or about July 7, 1976, and continuing until on or about August 23, 1976, in or near Greenwood in Leflore County in the Northern District of Mississippi and elsewhere, GEORGE RUSSELL FLEMING, being an employee of a firm engaged in commerce as a common carrier, and while riding in and upon a motortruck of such carrier moving in interstate commerce from Tulsa in the State of Oklahoma to Hartford in the State of Connecticut to Greenwood in the State of Mississippi, did willfully and knowingly misapply and embezzle and convert to his own use the motortruck in and upon which he was riding, namely, a 1969 Ford 1000 Diesel Tractor, and a 1972 Utility van refrigeration trailer, both of which were property and assets of such firm arising in and accruing from and used in such commerce; all in violation of Section 660, Title 18, United States Code.

(nm $5,000 or nm 10 yrs., or both)

COUNT TWO

On or about August 23, 1976, in Leflore County in the Northern District of Mississippi, GEORGE RUSSELL FLEMING

disposed of a stolen 1969 Ford 1000 Diesel Tractor which was moving as, was a part of, and constituted interstate commerce from in or near Americus in the State of Georgia to Leflore County, State of Mississippi, knowing the said motor vehicle to have been stolen; in violation of Section 2313, Title 18, United States Code.

(nm $5,000 or nm 5 yrs., or both)

A True Bill

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Foreman

.....

United States Attorney

FILED: March 26, 1979
R. F. Connor, *Clerk*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

UNITED STATES OF AMERICA *Plaintiff,* v. KENNETH FRANK USHER, (DOB: 08/29/33) *Defendant.*	No. 79-03093-01 CR-S 18 U.S.C. § 660 (NMT 10 years and/or $5,000)

INDICTMENT

THE GRAND JURY CHARGES THAT:

On or about the 11th day of December, 1978, in the Western District of Missouri, KENNETH FRANK USHER, being an employee, that is, a truck driver for Lowrence Moving and Storage Company, Lebanon, Missouri, a firm engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Memphis, State of Tennessee, to St. Louis County, State of Missouri, wilfully and knowingly did embezzle, steal and convert to his own use the sum of Nine Hundred Seventy-Four Dollars Seventy Three Cents ($974.73), of the monies and property of said carrier, arising and occurring from such commerce, which said monies and property had come into the possession of the said KENNETH FRANK USHER by virtue of his employment as an agent of the said Lowrence Moving and Storage Company; all in violation of Title 18, United States Code, Section 660.

A True Bill

.....
Foreman of the Grand Jury

/s/ ROBERT G. ULRICH
Assistant United States Attorney

FILED: March 10, 1980
R. F. Connor, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

UNITED STATES OF AMERICA, *Plaintiff,* *v.* ED BAILEY COWARDIN (DOB: 1/26/47) *Defendant.*	No. 80-04007-01-CR-C 18 U. S. C. 660 (NMT 10 years and $5,000)

INDICTMENT

THE GRAND JURY CHARGES THAT:

On or about August 21, 1978, in the Western District of Missouri, ED BAILY COWARDIN, being an employee, that is, a truck driver for Simmons Moving and Storage Company, Columbia, Missouri, a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier, moving in interstate commerce from St. Peters, Missouri, to El Paso, Texas, wilfully and knowingly did embezzle and convert to his own use the sum of $814.28, of the moneys and property of said carrier, arising and accruing from such commerce, which said moneys and property had come into the possession of ED BAILEY COWARDIN by virtue of his employment as an agent of the said Simmons Moving and Storage Company; all in violation of Title 18, United States Code, Section 660.

A TRUE BILL

.....
Foreman of the Grand Jury

/s/ GENE C. NAPIER
Assistant United States Attorney

FILED: December 12, 1976
John E. Pederson, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA, *Plaintiff,* v. ALAN D. O'LEARY, II, *Defendant.*	CR-76-33-H 18 U.S.C. § 660 ($5,000 and/or 10 years)

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

COUNT I

That on or about the 24th Day of August, 1976, in the District of Montana, ALAN D. O'LEARY II, being an employee, that is, a truck driver for United Parcel Service Inc., a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Seattle, State of Washington to Helena, State of Montana, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $12.30, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of Alan D. O'Leary II by virtue of his employment as agent of the said United Parcel Service, Inc., in violation of 18 U.S.C. Section 660.

COUNT II

That on or about the 27th day of August, 1976, in the District of Montana, ALAN D. O'LEARY II, being an employee, that is, a truck driver for United Parcel Service Inc., a body corporate engaged in commerce as a common

carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Phoenix, State of Arizona to Helena, State of Montana, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $39.55, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of Alan D. O'Leary II by virtue of his employment as agent of the said United Parcel Service, Inc., in violation of 18 U.S.C. Section 660.

COUNT III

That on or about the 7th Day of September, 1976, in the District of Montana, ALAN D. O'LEARY II, being an employee, that is, a truck driver for United Parcel Service Inc., a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from South Windsor, State of Connecticut to Helena, State of Montana, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $12.65, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of Alan D. O'Leary II by virtue of his employment as agent of the said United Parcel Service, Inc., in violation of 18 U.S.C. Section 660.

COUNT IV

That on or about the 7th of September, 1976, in the District of Montana, ALAN D. O'LEARY II, being an employee, that is, a truck driver for United Parcel Service Inc., a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Oklahoma City, State of Oklahoma to Helena, State of Montana, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $199.05, of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of Alan D. O'Leary II by virtue of his employment as agent of the said

United Parcel Service, Inc., in violation of 18 U.S.C. Section 660.

DATED this 6th day of December, 1976.

THOMAS A. OLSON
United States Attorney

/s/ ROBERT L. ZIMMERMAN
Assistant U. S. Attorney

FILED: January 27, 1975
Richard P. Peck, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, *Plaintiff,* vs. BILLY STARNS, *Defendant.*	CR. 75-L-2 INDICTMENT (18 U.S.C. 660)

The Grand Jury charges:

COUNT I

On or about the 26th day of June, 1974, through the 8th of July, 1974, in the District of Nebraska, BILLY STARNS, being an employee, that is, a truck driver for Kelco Foods Transportation, Inc., York, Nebraska, a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck in interstate commerce from Iowa to California, wilfully and knowingly did misapply, embezzle, steal and convert to his own use the sum of $100 of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of BILLY STARNS by virtue of his employment as agent of the said Kelco Foods Transportation, Inc., and such moneys were in the form of a check Number 1483 drawn on the York State Bank, York Nebraska, signed by Lucille Caves and made payable to Billy Starns.

In violation of 18 United States Code, Section 660.

COUNT II

On or about the 26th day of June, 1974, through the 8th day of July, 1974, in the District of Nebraska, BILLY STARNS, being an employee, that is, a truck driver for Kelco Foods Transportation, Inc., York, Nebraska, a body corporate

engaged in commerce as a common carrier, and while riding in and upon a motor truck in interstate commerce from Iowa to California, wilfully and knowingly did misapply, embezzle, steal and convert to his own use the sum of $100 of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of BILLY STARNS by virtue of his employment as agent of the said Kelco Foods Transportation, Inc., and such moneys were in the form of a check Number 1484 drawn on the York State Bank, York, Nebraska, signed by Lucille Caves and made payable to Billy Starns.

In violation of 18 United States Code, Section 660.

COUNT III

On or about the 26th day of June, 1974, through the 8th day of July, 1974, in the District of Nebraska, BILLY STARNS, being an employee, that is, a truck driver for Kelco Foods Transportation, Inc., York, Nebraska, a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck in interstate commerce from Iowa to California, wilfully and knowingly did misapply, embezzle, steal and convert to his own use the sum of $100 of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of BILLY STARNS by virtue of his employment as agent of the said Kelco Foods Transporation, Inc., and such moneys were in the form of a check Number 1485 drawn on the York State Bank, York Nebraska, signed by Lucille Caves and made payable to Billy Starns.

In violation of 18 United States Code, Section 660.

COUNT IV

On or about the 26th day of June, 1974, through the 8th day of July, 1974, in the District of Nebraska, BILLY STARNS, being an employee, that is, a truck driver for Kelco Foods Transportation, Inc., York, Nebraska, a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck in interstate commerce from Iowa to California, wilfully and knowingly did misapply, embezzle,

steal and convert to his own use the sum of $100 of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of BILLY STARNS by virtue of his employment as agent of the said Kelco Foods Transportation, Inc., and such moneys were in the form of a check Number 1486 drawn on the York State Bank, York, Nebraska, signed by Lucille Caves and made payable to Billy Starns.

In violation of 18 United States Code, Section 660.

A True Bill:

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Foreman

/s/ WILLIAM K. SCHAPHORST
United States Attorney

The United States of America requests that Lincoln, Nebraska, be designated place of trial in accordance with the Rules of this Court.

/s/ WILLIAM K. SCHAPHORST
United States Attorney

FILED: June 20, 1971
Angelo W. Locascio, *Clerk*

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA v. JOHN COLLIE SMART	Criminal No. 491-71 Title 18 U.S.C. § 660

The Grand Jury in and for the District of New Jersey, sitting at Newark charges:

COUNT I

That on or about August, 1970, at Livingston, New Jersey and within the jurisdiction of this Court, the defendant,

JOHN COLLIE SMART

being an employee of the common carrier, Thomas A. Reynolds Moving and Storage, Agent for United Van Lines, riding in and upon a motortruck of said carrier, which was moving in interstate commerce, did embezzle, steal, abstract and convert to his own use, $102.75 belonging to said firm, which money arose and accrued from the interstate transportation of chattels owned by Helen Hauilla from Pittsburgh, Pennsylvania to White Plains, New York.

In violation of Title 18 U.S.C., Section 660.

COUNT II

That on or about July, 1970 at Livingston, New Jersey and within the jurisdiction of this Court, the defendant,

JOHN COLLIE SMART

being an employee of the common carrier, Thomas A. Reynolds Moving and Storage, Agent for United Van Lines, riding in and upon a motortruck of said carrier, which was moving in

interstate commerce, did embezzle, steal, abstract and convert to his own use, $843.00 belonging to said firm, which money arose and accrued from the interstate transportation of chattels owned by Tom Brown from Denver, Colorado to Gaithersburg, Maryland.

In violation of Title 18 U.S.C., Section 660.

COUNT III

That on or about July, 1970 at Livingston, New Jersey and within the jurisdiction of this Court, the defendant,

JOHN COLLIE SMART

being an employee of the common carrier, Thomas A. Reynolds Moving and Storage, Agent for United Van Lines, riding in and upon a motortruck of said carrier, which was moving in interstate commerce, did embezzle, steal, abstract and convert to his own use, $148.46 belonging to said firm, which money arose and accrued from the interstate transportation of chattels owned by Robert L. Kerns from Emporia, Kansas to Alexandria, Virginia.

In violation of Title 18 U.S.C., Section 660.

COUNT IV

That on or about August, 1970 at Livingston, New Jersey and within the jurisdiction of this Court, the defendant,

JOHN COLLIE SMART

being an employee of the common carrier, Thomas A. Reynolds Moving and Storage, Agent for United Van Lines, riding in and upon a motortruck of said carrier, which was moving in interstate commerce, did embezzle, steal, abstract and convert to his own use, $749.95 belonging to said firm, which money arose and accrued from the interstate transportation of chattels owned by John Simpson from Topeka, Kansas to Hampton, New Jersey.

In violation of Title 18 U.S.C., Section 660.

COUNT V

That on or about August, 1970, at Livingston, New Jersey and within the jurisdiction of this Court, the defendant,

JOHN COLLIE SMART

being an employee of the common carrier, Thomas A. Reynolds Moving and Storage, Agent for United Van Lines, riding in and upon a motortruck of said carrier, which was moving in interstate commerce, did embezzle, steal, abstract and convert to his own use, $1,277.44 belonging to said firm which money arose and accrued from the interstate transportation of chattels owned by W. G. Suttle, from Atlanta, Georgia to Watertown, Massachusetts.

In violation of Title 18 U.S.C., Section 660.

A True Bill.

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Foreman

/s/ HERBERT J. STERN
United States Attorney

FILED: February 1, 1977
Angelo W. Locascio, *Clerk*

RBK:alm
76 1386

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA v. GRADY LEE WIKE, JR.	CRIMINAL NO. CR 77-257-A 18 U.S.C. § 660

The Grand Jury in and for the District of New Jersey, sitting at Camden, charges:

That on or about February 18, 1976, at Pennsauken, in the District of New Jersey, and elsewhere, the defendant

GRADY LEE WIKE, JR.

being an employee, that is, a truck driver for Coryell Truck Rental, a firm engaged in commerce as a common carrier, and while riding in and upon a motortruck of such carrier moving in interstate commerce from Laredo, Texas, to Pennsauken, New Jersey, and back, did knowingly and wilfully embezzle and convert to his own use moneys and assets of the said firm in the amount of $1,237.50, the said moneys and assets arising and accruing from such commerce, which said moneys and assets had come into the possession of GRADY LEE WIKE, JR., by virtue of his employment as agent of the said Coryell Truck Rental.

In violation of Title 18, United States Code, Section 660.

A True Bill

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Foreman

/s/ JONATHAN L. GOLDSTEIN
United States Attorney

FILED: November 9, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA v. TOM KOLE, RICHARD SIMPSON, STEPHEN FINKEL, and RENA STANCHFIELD, *Defendants.*	INDICTMENT 77 Cr. 0796

COUNT ONE

The Grand Jury charges:

INTRODUCTION

1. At all times relevant herein REA Express Inc. ("REA") was a Delaware Corporation with its corporate headquarters in New York, New York, and was a firm and corporation engaged in commerce as a common carrier, and was the nation's largest ground and air express service with offices throughout the United States employing thousands of employees.

2. At all times relevant herein, the defendant, TOM KOLE, was the President and Chief Operating Officer and Chief Executive Officer of REA.

3. At all times relevant herein, the defendant, RICHARD SIMPSON, was an officer and manager of REA and from on or about March 21, 1972 was a Vice President of REA for Marketing and Sales.

4. At all times relevant herein, the defendant, STEPHEN FINKEL, was a director and manager of REA and from at

least in or about June 1972 was the Director of Advertising and Public Relations for REA.

5. From on or about March 22, 1972, Communications Jax, Inc. ("Communications Jax"), also known as Jax Communications, was a Florida corporation with its principal place of business in Jacksonville, Florida, which was engaged in the advertising business and which did a substantial amount of business with REA.

6. From on or about March 22, 1972, Wesley Jack Martin, was the President of Communications Jax and its Chief Operating Officer.

7. From on or about January 12, 1973 Thoroughbred Investors Services Inc. ("TIS") was a Florida Corporation, whose stock was owned by the defendants TOM KOLE, which engaged in business relating to thoroughbred race horses.

8. At all times relevant herein, the defendant, RENA STANCHFIELD, was the sister-in-law of the defendant, TOM KOLE.

9. At all times relevant herein, Glenn Stanchfield, was the brother-in-law of the defendant, TOM KOLE, and was, according to the books and records of REA, an employee of REA until May 1974.

THE CONSPIRACY

10. From in or about December 1970 to in or about November 1975, in the Southern District of New York, and elsewhere, TOM KOLE, RICHARD SIMPSON, STEPHEN FINKEL and RENA STANCHFIELD, the defendants, and Wesley Jack Martin and Glenn Stanchfield, named herein as a co-conspirators but not as defendants, and others to the grand jury known and unknown, did unlawfully, knowingly and wilfully conspire and agree together and with each other to embezzle, steal, abstract, wilfully convert to their own use and the use of others, wilfully misapply and wilfully permit to be misapplied moneys, funds, credits, securities, properties and assets of REA arising and accruing from, and used in, in whole and in

part, REA's business as a common carrier engaged in commerce, in violation of Title 18, United States Code, Section 660.

Objects of the Conspiracy

11. It was a part of said conspiracy that the defendants, Tom Kole and Richard Simpson, would use their high positions of trust within REA to embezzle and convert to their own use in excess of $100,000 of the moneys of REA which were used in part to finance the defendant, Tom Kole's personal horseracing business, to pay-off personal loans of the defendant, Richard Simpson, and to pay cash to politicians.

Means of the Conspiracy

12. Among the means by which the defendants and their co-conspirators would and did carry out the conspiracy were the following:

(a) The defendants, Tom Kole and Richard Simpson, caused Wesley Jack Martin and Communications Jax to submit false and fraudulent bills to REA falsely representing that certain services and work were performed.

(b) The defendants, Tom Kole and Richard Simpson, would then approve such false and fraudulent bills for payment by REA to Wesley Jack Martin and Communications Jax.

(c) The defendants, Tom Kole and Richard Simpson, would then receive substantial kick-backs of money from Wesley Jack Martin and Communications Jax.

Overt Acts

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed by members of the conspiracy in the Southern District of New York and elsewhere.

1. On or about October 5, 1972, Wesley Jack Martin gave Richard Simpson a check written on a Communications Jax checking account in the amount of $6,077.10 payable to the Midtown Bank of Miami, which check was used

by RICHARD SIMPSON to pay-off a personal loan RICHARD SIMPSON had previously taken out at said bank.

2. On or about January 8, 1973 Wesley Jack Martin wrote a check on a Communications Jax checking account payable to R. Stanchfield in the amount of $3,376.14.

3. On or about January 8, 1973, Wesley Jack Martin wrote a check on a Communications Jax checking account payable to G. Stanchfield in the amount of $5,289.03.

4. On or about January 8, 1973, Wesley Jack Martin wrote a check on a Communications Jax checking account payable to L. Castellano in the amount of $1,466.27.

5. On or about January 10, 1973, the defendants, TOM KOLE and RICHARD SIMPSON, in New York, New York approved an REA payment to Jax Communications of $10,823.89.

6. On or about January 12, 1973, the defendant, RENA STANCHFIELD, deposited the checks referred to in overt act numbers 2 and 3 payable to R. Stanchfield and G. Stanchfield into her personal checking account at the Second National Bank of North Miami Beach, the total of said deposit being $8,665.17.

7. On or about January 15, 1973, RENA STANCHFIELD wrote a check on her personal checking account at the Second National Bank of North Miami Beach payable to TOM KOLE in the amount of $8,500.

8. On or about January 15, 1973, TOM KOLE deposited and cause to be deposited the $8,500 check referred to in overt act number 7 into his personal checking account at the Chemical Bank in New York, New York.

9. On or about January 12, 1973, RENA STANCHFIELD deposited the Communications Jax check payable to L. Castellano referred to in overt act number 4 into the checking account of TIS at the Southeast Bank of Miramar, Miramar, Florida.

10. On or about March 29, 1973, Wesley Jack Martin wrote a check on a Communications Jax checking account in

the amount of $1,478.03 payable to the Jacksonville National Bank with which he purchased a cashiers check in the amount of $1,478.03 payable to American Express, which was used to pay an American Express bill of the defendant, RICHARD SIMPSON.

11. On or about July 3, 1973, Wesley Jack Martin purchased a cashier's check in the amount of $1,533.99 from the Southeast First Bank of Jacksonville, which check was used to pay an American Express bill of the defendant, RICHARD SIMPSON.

12. On or about June 27, 1973, the defendants, RICHARD SIMPSON and STEPHEN FINKEL, approved in New York, New York a $20,000 payment by REA to Communications Jax.

13. On or about December 31, 1973, Wesley Jack Martin wrote a check on a Communications Jax checking account payable to the Sun Bank of Midtown in the amount of $10,200.38, which check was used to pay-off a personal loan that the defendant, RICHARD SIMPSON, had previously taken out at said bank.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

1. On or about December 28, 1972, in the Southern District of New York, TOM KOLE and RICHARD SIMPSON, the defendants, did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, wilfully misapply and wilfully permit to be misapplied moneys, funds, credits, securities, properties and assets of REA in the amount of $24,492.08 arising and accruing from, and used in, in whole and in part, REA's business as a firm and corporation engaged in commerce as a common carrier.

2. The allegations contained in the Introduction of Count One of this Indictment (paragraphs 1-9) are hereby repeated and realleged as if fully set forth herein.

(Title 18, United States Code, Sections 660 and 2.)

COUNT THREE

The Grand Jury further charges:

1. On or about January 12, 1973, in the Southern District of New York, TOM KOLE and RICHARD SIMPSON, the defendants, did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, wilfully misapply and wilfully permit to be misapplied moneys, funds, credits, securities, properties and assets of REA in the amount of $10,582.50 arising and accruing from, and used in, in whole and in part, REA's business as a firm and corporation engaged in commerce as a common carrier.

2. The allegations contained in the Introduction of Count One of this Indictment (paragraphs 1-9) are hereby repeated and realleged as if fully set forth herein.

(Title 18, United States Code, Sections 660 and 2.)

COUNT FOUR

The Grand Jury further charges:

1. On or about June 27, 1973, in the Southern District of New York, TOM KOLE, RICHARD SIMPSON and STEPHEN FINKEL, the defendants, did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, wilfully misapply and wilfully permit to be misapplied moneys, funds, credits, securities, properties and assets of REA in the amount of $16,000, arising and accruing from, and used in, in whole and in part, REA's business as a firm and corporation engaged in commerce as a common carrier.

2. The allegations contained in the Introduction of Count One of this Indictment (paragraphs 1-9) are hereby repeated and realleged as if fully set forth herein.

(Title 18, United States Code, Sections 660 and 2.)

COUNT FIVE

The Grand Jury further charges:

On or about May 25, 1974, in the Southern District of New York, the defendant, TOM KOLE, in a matter within the

jurisdiction of the Interstate Commerce Commission, a department and agency of the United States, did unlawfully, knowingly and wilfully make a false statement and representation to a representative of the Interstate Commerce Commission, to wit: "I have never taken corporate funds for my personal use".

(Title 18, United States Code, Section 1001.)

COUNT SIX

The Grand Jury further charges:

On or about May 25, 1974, in the Southern District of New York, the defendant, TOM KOLE, in a matter within the jurisdiction of the Interstate Commerce Commission, a department and agency of the United States, did unlawfully, knowingly and wilfully make false statements and representations to a representative of the Interstate Commerce Commission, to wit: "I have no affiliation *whatsoever* with Nolan-Johnson. They were recommended to us by the airlines. I have never (either personally or through my racing stable) received any payments from them. I am very seldom 'directly' involved in any dealings with them—or Communications Jax. I have, for example, never even visited the offices of either agency".

(Title 18, United States Code, Section 1001.)

..... /s/ ROBERT B. FISKE, JR.
Foreman *United States Attorney*

FILED: JUNE 28, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, v. RAYMOND F. MAIXNER, HAROLD D. BATES, ROBERT GREGG, RALPH BATES, RAYBURN L. MORRISON, a/k/a "Raymond Morrison," *Defendants.*	INDICTMENT 78 CRIM. 0487

COUNT ONE

THE GRAND JURY CHARGES:

INTRODUCTION

1. At all times relevant herein REA Express Inc. ("REA") was a firm and corporation engaged in commerce as a common carrier, with its corporate headquarters in New York, New York, and was the nation's largest ground and air express service with offices throughout the United States employing thousands of persons.

2. Defendant RAYMOND F. MAIXNER, at all times relevant herein, was the corporate Treasurer and an officer of REA.

3. Defendant HAROLD D. BATES, at all times relevant herein, was the Manager of the Accounting Department and a director of REA.

4. Defendant RALPH BATES was and is the brother of the defendant HAROLD D. BATES.

THE CONSPIRACY

5. From in and around January 1973 to in and around November 1975, in the Southern District of New York and elsewhere, RAYMOND F. MAIXNER, HAROLD D. BATES, ROBERT GREGG, RALPH BATES, AND RAYBURN L. MORRISON, a/k/a "Raymond Morrison," the defendants, together with others known and unknown to the Grand Jury, did unlawfully, wilfully, and knowingly conspire and agree together and with each other to embezzle, steal, abstract, wilfully convert to their own use and the use of others, wilfully misapply and permit to be misapplied moneys, funds, credits, securities, properties and assets of REA arising and accruing from, and used in, in whole and in part, REA's business as a common carrier engaged in commerce, in violation of Title 18, United States Code, Section 660.

OBJECT OF THE CONSPIRACY

6. It was an object of the conspiracy that the defendants, RAYMOND F. MAIXNER AND HAROLD D. BATES, would and did use their high positions of trust within REA to embezzle, steal, misapply and convert to their own use, with the assistance of the other defendants and co-conspirators, many tens of thousands of dollars that belonged to REA, its shareholders and employees.

MEANS OF THE CONSPIRACY

7. Among the means by which the defendants and their co-conspirators would and did carry out the conspiracy was the following:

(a) The defendants, RAYMOND F. MAIXNER AND HAROLD D. BATES, would approve and process through the Tax and Accounting Departments of REA various REA checks payable to the defendants, ROBERT GREGG and RAYBURN L. MORRISON, a/k/a "Raymond Morrison."

(b) The defendants ROBERT GREGG and RAYBURN L. MORRISON, a/k/a "Raymond Morrison" would then kickback to the defendants RAYMOND F. MAIXNER and HAROLD

D. BATES substantial amounts of these moneys, with the defendant RALPH BATES assisting as an intermediary.

OVERT ACTS

In furtherance of the conspiracy and to effect its objects, the following overt acts were committed by members of the conspiracy in the Southern District of New York and elsewhere.

1. On or about November 2, 1973 HAROLD D. BATES and ROBERT GREGG opened up a joint checking account in their names at the Kendale State Bank in Miami, Florida.

2. On or about November 13, 1973 Harold D. Bates opened up a checking account in his name at the Irving Trust Bank in New York, New York.

3. On or about November 14, 1973 RAYMOND F. MAIXNER and HAROLD D. BATES approved and processed in New York, New York a REA check payable to ROBERT GREGG in the amount of $7,861.42.

4. On or about November 19, 1973 Robert Gregg, deposited the REA check referred to in overt act number 3 in the joint account of HAROLD D. BATES and ROBERT GREGG at the Kendale State Bank in Miami Florida.

5. On or about November 20, 1973, RAYMOND F. MAIXNER and HAROLD D. BATES approved and processed in New York, New York a REA check payable to ROBERT GREGG in the amount of $12,884.69.

6. On or about November 26, 1973, ROBERT GREGG deposited the REA check referred to in overt act number 5 into the joint account of HAROLD D. BATES and ROBERT GREGG at the Kendale State Bank in Miami, Florida.

7. On or about April 4, 1974, HAROLD D. BATES and RAYMOND F. MAIXNER approved and processed in New York, New York, a REA check payable to the defendant, RAYBURN L. MORRISON, a/k/a "Raymond Morrison," in the amount of $31,300.

8. On or about April 18, 1974 at the Security Pacific National Bank in Hemet, California, RAYBURN L. MORRISON, a/k/a "Raymond Morrison," purchased with the proceeds of the REA check referred to in overt act number 7, four cashiers' checks, each of which was payable to "Ray L. Morrison," in the amounts of (a) $10,000; (b) $12,000; (c) $6,000; (d) $3,300.

9. On or about April 18, 1974 RAYBURN L. MORRISON, a/k/a "Raymond Morrison" endorsed each of the four cashiers' checks referred to in overt act number 8.

10. On or about April 23, 1974, the defendant, RAYBURN L. MORRISON, cashed the $3,300 cashiers' check payable to himself at the Security Pacific National Bank in Fulerton, California.

11. On or about May 23, 1974, HAROLD D. BATES deposited into his checking account at the Irving Trust Company in New York, New York the $10,000 cashiers' check referred to in overt act number 8.

12. On or about May 14, 1974, HAROLD D. BATES deposited into his checking account at the Irving Trust Company in New York, New York, the $6,000 cashiers' check referred to in overt act number 8.

13. On or about May 16, 1974 RALPH BATES deposited the $12,000 cashiers' check referred to in overt act number 8 into his checking account at the United California Bank in Corona, California.

14. On or about July 25, 1974 RALPH BATES purchased a $10,000 cashiers' check at the United California Bank payable to HAROLD D. BATES.

15. On or about July 29, 1974, HAROLD D. BATES deposited the $10,000 cashiers' check referred to in overt act number 14 into his checking account at the First Charter National Bank.

(Title 18, United States Code, Section 371.)

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

1. On or about November 14, 1973, in the Southern District of New York, RAYMOND F. MAIXNER, HAROLD D. BATES and ROBERT GREGG, the defendants, did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, and wilfully misapply and permit to be misapplied moneys, funds, credits, securities, properties and assets of REA in the amount of $7,861.42 arising and accruing from, and used in, in whole and in part, REA's business as a firm and corporation engaged in commerce as a common carrier.

2. The allegations contained in Paragraphs 1-7 of Count One of this Indictment are hereby repeated and realleged as if fully set forth herein.

(Title 18, United States Code, Section 660 and 2.)

COUNT THREE

THE GRAND JURY FURTHER CHARGES:

1. On or about November 20, 1973, in the Southern District of New York, RAYMOND F. MAIXNER, HAROLD D. BATES, ROBERT GREGG, the defendants, did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, and wilfully misapply and permit to be misapplied moneys, funds, credits, securities, properties and assets of REA in the amount of $12,884.69 arising and accruing from, and used in, in whole and in part, REA's business as a firm and corporation engaged in commerce as a common carrier.

2. The allegations contained in Paragraphs 1-7 of Count One of this Indictment are hereby repeated and realleged as if fully set forth herein.

(Title 18, United States Code, Sections 660 and 2.)

COUNT FOUR

THE GRAND JURY FURTHER CHARGES:

1. On or about January 25, 1974 in the Southern District of New York, RAYMOND F. MAIXNER, HAROLD D. BATES, ROBERT GREGG, the defendants, did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, and wilfully misapply and permit to be misapplied moneys, funds, credits, securities, properties and assets of REA in the amount of $20,000, arising and accruing from, and used in, in whole and in part, REA's business as a firm and corporation engaged in commerce as a common carrier.

2. The allegations contained in Paragraphs 1-7 of Count One of this Indictment are hereby repeated and realleged as if fully set forth herein.

(Title 18, United States Code, Sections 660 and 2.)

COUNT FIVE

THE GRAND JURY FURTHER CHARGES:

1. On or about April 4, 1974, in the Southern District of New York, RAYMOND F. MAIXNER, HAROLD D. BATES, RAYBURN L. MORRISON, a/k/a "Raymond Morrison," the defendants, did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, and wilfully misapply and permit to be misapplied moneys, funds, credits, securities, properties and assets of REA in the amount of $31,300 arising and accruing from, and used in, in whole and in part, REA's business as a firm and corporation engaged in commerce as a common carrier.

2. The allegations contained in Paragraphs 1-7 of Count One of this Indictment are hereby repeated and realleged as if fully set forth herein.

(Title 18, United States Code, Sections 660 and 2.)

COUNT SIX

THE GRAND JURY FURTHER CHARGES:

1. On or about April 15, 1974, in the Southern District of New York, RAYMOND F. MAIXNER, the defendant, did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to his own use and the use of others, and wilfully misapply and permit to be misapplied moneys, funds, credits, securities, properties and assets of REA in the amount of $5,000 arising and accruing from, and used in, in whole and in part, REA's business as a firm and corporation engaged in commerce as a common carrier.

2. The allegations contained in Paragraphs 1-7 of Count One of this Indictment are hereby repeated and realleged as if fully set forth herein.

(Title 18, United States Code, Sections 660 and 2.)

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Foreman

/s/ ROBERT B. FISKE, JR.
United States Attorney

FILED: July 3, 1980

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, v. JOHN MARANO, *Defendant.*	INDICTMENT S 80 Cr. 149 (WK)

COUNT ONE

The Grand Jury charges:

In or about August, 1975 in the Southern District of New York and elsewhere, the defendant JOHN MARANO and others known and unknown to the grand jury did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to his own use and the use of others, and wilfully misapply and permit to be misapplied monies, funds, credits, securities, properties and assets of Prudential Lines, Inc. arising and accruing from, and used in, in whole or in part, Prudential Lines, Inc.'s business as a firm and corporation engaged in commerce as a common carrier, to wit, kickbacks of more than $50,000 obtained in connection with the purchase by Prudential Lines, Inc. of approximately $1.5 million of transportation equipment from the Strick Corporation, Fairless Hills, Pennsylvania.

(Title 18, United States Code, Section 660.)

COUNT TWO

The Grand Jury further charges:

1. From in or about July 1, 1974 up to and including April 1977, in the Sourthern District of New York, JOHN MARANO, the defendant, and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly, did

devise and intend to devise a fraudulent scheme and artifice to defraud Prudential Lines, Inc. (hereinafter "Prudential") and its shareholders, officers and directors of the honest and faithful services of one of its employees and officers, and to obtain money and property for themselves and others by means of false and fraudulent pretenses, representations and promises.

2. It was part of said scheme and artifice to defraud Prudential that if a ten year lease were entered into between Prudential and the owner of a warehouse located at 814 Third Avenue, Brooklyn, New York on terms acceptable to the owner, cash payments of $20,000 each would be received by, among others, JOHN MARANO, the defendant, Anthony M. Scotto, and Anthony Anastasio, who were co-schemers, and the "kitty."

3. It was part of said scheme and artifice to defraud Prudential that the Board of Directors of Prudential would, and did, approve such lease without knowledge of the fraudulent scheme.

4. On or about December 19, 1974, in the Southern District of New York, JOHN MARANO, the defendant, for the purpose of executing such scheme and artifice to defraud Prudential and attempting so to do, did place and cause to be placed in a post office and authorized depository for mail matter and did cause to be delivered by mail according to the direction thereon certain mail matter to be sent and delivered by the United States Postal Service, to wit, the Certificate of Resolution of Approval of said lease by the Board of Directors of Prudential from Prudential and its agent to the owner and his agent.

5. As part of and in furtherance of this scheme to defraud, Anthony Anastasio, a co-schemer gave JOHN MARANO, the defendant, $20,000 in and about January—February, 1975.

(Title 18, United States Code, Section 1341 and 2.)

COUNTS THREE AND FOUR

The Grand Jury further charges:

On or about the dates hereinafter set forth in the Southern District of New York, JOHN MARANO, the defendant, being an agent of an officer of an employer of employees in a business affecting interstate and foreign commerce, to wit, Marine Repair Services, Inc., did pay and deliver and agree to pay and deliver, directly and indirectly, money and any thing of value to Anthony M. Scotto, a representative of the said employees of Marine Repair Services, Inc., as hereinafter set forth:

Count	Approximate Amount	Approximate Date
THREE	$2,700	In or about March 1975
FOUR	$3,000	On or about July 29, 1975

(Title 29, United States Code, Section 186(a) and Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 15th day of April, 1976, in the Southern District of New York and elsewhere, JOHN MARANO, the defendant, who during the calendar year 1975 was married, unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the joint income tax due and owing by himself and his wife to the United State of America for the calendar year 1975, by preparing and causing to be prepared and by signing and causing to be signed a false and fraudulent joint income tax return on behalf of himself and his wife, which was filed with the Internal Revenue Service and which stated that their joint taxable income for said calendar year was $76,664 and that the amount of income tax due and owing thereon was $30,494, whereas the joint taxable income for the said calendar year was at least $179,864.25 upon which an income tax of at least $82,705 was due and owing to the United States of America.

(Title 26, United States Code, Section 7201.)

COUNT SIX

The Grand Jury further charges:

On or about the 15th day of April, 1976, in the Southern District of New York, JOHN MARANO, the defendant, unlawfully, wilfully and knowingly did make and subscribe a joint United States Income Tax Return, Form 1040, for the calendar year 1975, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service and which he did not believe to be true and correct as to a material matter, to wit, the omission of at least $103,200 from his reported 1976 adjusted gross income of $95,796.

(Title 26, United States Code, Section 7206(1).)

..... /s/ JOHN S. MARTIN, JR.
Foreman *United States Attorney*

FILED: August 27, 1976

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA vs. CHARLES W. SCOGGINS	Docket No C-CR-76-86 Vio: 18 U.S.C. Section 660

The Grand Jury charges:

That beginning on or about January, 1974, and continuing until on or about October 22, 1975, at Lowell, Gaston County, within the Western District of Northern Carolina,

CHARLES W. SCOGGINS,

being an officer, to-wit, Timber and Surfacing Supervisor of Southern Railway Company, a corporation engaged in commerce as a common carrier, did knowingly and wilfully embezzle, steal, abstract and wilfully permit to be misapplied $57,928.00 of the monies, funds, credits, securities, property or assets of said Southern Railway Company said funds having arisen in whole or in part from the interstate commerce operation of Southern Railway Company, and did wilfully and knowingly convert the same to his own use and to the use of others, in violation of Title 18, United States Code, Section 660.

A True Bill:

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Foreman

KEITH S. SNYDER
United States Attorney

/s/DOUGLAS M. MARTIN
Assistant United States Attorney

FILED: January 3, 1977
Carmon J. Stuart, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

UNITED STATES OF AMERICA v. OTHELLO DELANO HINES	No. CR-77-26-WS

The Grand Jury Charges:

On or about July 22, 1976, in the Middle District of North Carolina, OTHELLO DELANO HINES, being an employee, that is, a truck driver, for Rucker Moving and Storage Company, Inc., a body corporate engaged in interstate commerce as a common carrier agent of Allied Van Lines, Inc., registered with the Interstate Commerce Commission as No. MC15735, and while riding in and upon a motor truck of such carrier moving in interstate commerce from the State of Alabama to the State of North Carolina, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $687.90 of the moneys and property of said carrier, arising and occurring from such shipping commerce, which moneys and property had come into the possession of OTHELLO DELANO HINES by virtue of his employment as agent of Rucker Moving and Storage Company, Inc.; in violation of 18 U.S.C. 660.

A True Bill

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Foreman

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United States Attorney

FILED: April 19, 1972
Cletus J. Schmidt, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA,
SOUTHWESTERN DIVISION

UNITED STATES OF AMERICA vs. WILLIAM H. MILLER	INDICTMENT Charge: Violation of Title 18 United States Code, Section 660 CL 79-9

THE GRAND JURY CHARGES:

On or about the 10th day of November 1978, in the District of North Dakota, WILLIAM H. MILLER, being an employee; that is, a truck driver for Floyd Roehl, Roehl Transfer, New Leipzig, North Dakota, a company engaged in interstate commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from New Leipzig, North Dakota, to Denver, Colorado, willfully and knowingly did steal and convert to his own use a tractor-trailer rig described as: a 1975 Mack truck, SN F786LST 2425, solid white in color, North Dakota Tractor License PR 682; and a 1968 Alloy flat bed trailer, SN 68900, North Dakota Trailer License PR 1109, white with green trim, green tarp cover, with sides that raise for grain hauling; which said property had come into the possession of William H. Miller by virtue of his employment as agent of Floyd Roehl, Roehl Transfer, New Leipzig, North Dakota.

A True Bill

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Foreman

/s/ JAMES R. BRITTON
United States Attorney

FILED: March 29, 1977
Jack C. Silver, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, *Plaintiff,* v. ROBERT W. SMOCK, *Defendant.*	No. 77-CR-40 (T. 18, U.S.C. § 660)

INDICTMENT

THE GRAND JURY CHARGES:

On or about January 16, 1977, at Cleveland, Oklahoma, in the Northern District of Oklahoma, Robert W. Smock, being an employee, that is, a truck driver for Atlas Van Lines, a body corporate engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce from Los Angeles, State of California, to Cleveland, State of Oklahoma, willfully and knowingly did embezzle, steal and convert to his own use the sum of $2,565.22 of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of Robert W. Smock by virtue of his employment as agent of the said Atlas Van Lines; in violation of Title 18, United States Code, Section 660.

A True Bill

/s/ RALPH JAMES
Foreman

.....
Asst. United States Attorney

FILED: September 12, 1978
Robert M. Christ, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA v. NEAL PAUL MCKELLIPS, AKA P. A. WATSON AKA A. L. WARNER *Defendant*	No. CR 78-200 INDICTMENT [18 U.S.C. 660]

THE GRAND JURY CHARGES:

COUNT I

That between April, 1975 and September, 1977, in the District of Oregon, the defendant, Neal Paul McKellips, aka P. A. Watson, aka A. L. Warner, officer and manager of the Oregon, California and Eastern Railroad, a corporation engaged in commerce as a common carrier, did wilfully and knowingly embezzle, steal, abstract, wilfully misapply, and convert to his own use money, property, and assets of the Oregon, California and Eastern Railroad, to wit: by preparing and authorizing checks payable either to the Southern Oregon Service or A. L. Warner for dispatching services when in fact Southern Oregon Service and A. L. Warner is the defendant; all in violation of United States Code 18, Section 660.

COUNT II

That on or about September, 1976, in the District of Oregon, the defendant Neal Paul McKellips, also known as P. A. Watson, also known as A. L. Warner, an officer and manager of the Oregon, California and Eastern Railroad, a corporation engaged in commerce as a common carrier, did wilfully and knowingly embezzle, steal, abstract, wilfully misapply, convert to his own use money, property and assets of the Oregon, California and Eastern Railroad, to wit: by using materials used in the construction of a railroad spur for Maywood Industries without paying the Oregon, California

FILED: September 12, 1978
Robert M. Christ, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA v. NEAL PAUL MCKELLIPS, AKA P. A. WATSON AKA A. L. WARNER *Defendant*	No. CR 78-200 INDICTMENT [18 U.S.C. 660]

THE GRAND JURY CHARGES:

COUNT I

That between April, 1975 and September, 1977, in the District of Oregon, the defendant, Neal Paul McKellips, aka P. A. Watson, aka A. L. Warner, officer and manager of the Oregon, California and Eastern Railroad, a corporation engaged in commerce as a common carrier, did wilfully and knowingly embezzle, steal, abstract, wilfully misapply, and convert to his own use money, property, and assets of the Oregon, California and Eastern Railroad, to wit: by preparing and authorizing checks payable either to the Southern Oregon Service or A. L. Warner for dispatching services when in fact Southern Oregon Service and A. L. Warner is the defendant; all in violation of United States Code 18, Section 660.

COUNT II

That on or about September, 1976, in the District of Oregon, the defendant Neal Paul McKellips, also known as P. A. Watson, also known as A. L. Warner, an officer and manager of the Oregon, California and Eastern Railroad, a corporation engaged in commerce as a common carrier, did wilfully and knowingly embezzle, steal, abstract, wilfully misapply, convert to his own use money, property and assets of the Oregon, California and Eastern Railroad, to wit: by using materials used in the construction of a railroad spur for Maywood Industries without paying the Oregon, California

and Eastern Railroad for the same, all in violation of 18 U.S.C. 660.

COUNT III

That on or about July, in the District of Oregon, the defendant Neal Paul McKellips, also known as P. A. Watson, also known as A. L. Warner, an officer and manager of the Oregon, California and Eastern Railroad, a corporation engaged in commerce as a common carrier, did wilfully and knowingly embezzle, steal, abstract, wilfully misapply and convert to his own use money, property and assets of the Oregon, California and Eastern Railroad, to wit: by using materials used in the construction of a railroad spur for Alpine Veneer without paying the Oregon, California and Eastern Railroad for the same, all in violation of 18 U.S.C. 660.

COUNT IV

That on or about September, 1977, in the District of Oregon, the defendant Neal Paul McKellips, also known as P. A. Watson, also known as A. L. Warner, an officer and manager of the Oregon, California and Eastern Railroad, a corporation engaged in commerce as a common carrier, did wilfully and knowingly embezzle, steal, abstract, wilfully misapply and convert to his own use money, property and assets of the Oregon, California and Eastern Railroad, to wit: by using materials used in the construction of a railroad spur for Thomas Lumber Co. without paying the Oregon, California and Eastern Railroad for the same, all in violation of 18 U.S.C. 660.

DATED this 12 day of September 1978.

A True Bill.

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Foreman

SIDNEY I. LEZAK
United States Attorney
District of Oregon

/s/ JAMES L. SUTHERLAND
Assistant United States Attorney

FILED: May 9, 1979
ROBERT M. CHRIST, *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA vs. KENNETH WAYNE LAW, *Defendant.*	No. CR 79-96 INDICTMENT [18 USC 660]

THE GRAND JURY CHARGES:

That from on or about September 3, 1977, in the District of Oregon, KENNETH WAYNE LAW, defendant herein, being an employee, that is a truck driver, for the Santa Fe Storage and Transfer Company of Santa Fe, New Mexico, a corporation engaged in commerce as a common carrier, and while driving in and upon a motor truck of said carrier, that is a Mayflower tractor and trailer owned by said Santa Fe Storage and Transfer Company, which was moving in interstate commerce from Del Mesa, California, to Portland, Oregon, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $1,609.06 of the moneys and property of said carrier, arising and occurring from such commerce, which said moneys and property had come into the possession of Kenneth Wayne Law by virtue of his employment as agent of said Santa Fe Storage and Transfer Company; in violation of Title 18, United States Code, Section 660.

Dated this 8th day of May, 1979.

A True Bill.

SIDNEY I. LEZAK
United States Attorney
District of Oregon

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Foreman

/s/ KENNETH C. BAUMAN
Assistant United States Attorney

FILED: September 10, 1974

REJC: COB: mdl

Title 18, U.S.C., §§ 371, 1341, 1343 and 660.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA v. JOSEPH H. ROSENBAUM FRANCIS N. ROSENBAUM FIDEL GOTZ DAVID C. BEVAN WILLIAM R. GERSTNECKER and FIRST FINANCIAL TRUST, a Lichtenstein Corporation	CRIMINAL NUMBER Conspiracy; Mail Fraud Wire Fraud; Embezzlment and Misapplication of the Assets of a Common Carrier

INDICTMENT

COUNT I

THE GRAND JURY CHARGES THAT:

1. At all times relevant to this Indictment the Penn Central Company, known as the Penn Central Transportation Company on and after October 1, 1969, was a corporation engaged in interstate commerce as a common carrier. Such corporation will be referred to hereinafter as the "Penn Central Transportation Company."

2. At all time relevant to this Indictment the American Contract Company was a Delaware Corporation and a wholly owned subsidiary of the Penn Central Transportation Company.

3. At all times relevant to this Indictment and until his employment was terminated on June 8, 1970, Defendant, DAVID C. BEVAN, was a Director of the Penn Central Transportation Company and an Officer of such Company, to wit:

Chief Financial Officer and Chairman of the Finance Committee.

4. At all times relevant to this Indictment and until September 1, 1969, Defendant, WILLIAM R. GERSTNECKER, was an Officer, to wit: Vice-President—Corporate, of the Penn Central Transportation Company. Although Defendant, WILLIAM R. GERSTNECKER, officially terminated his employment with the Penn Central Transportation Company on or about September 1, 1969, with respect to the matters set forth in this Indictment, he continued to act with authority and apparent authority, and subject to the duties and responsibilities of an Officer of the Penn Central Transportation Company.

5. From on or about July 25, 1969, and continuing until on or about November 1, 1970, at Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, the Defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN and WILLIAM R. GERSTNECKER, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed with each other, and from and after September 15, 1969, with FIRST FINANCIAL TRUST, Vaduz, Lichtenstein, and with other persons to this Grand Jury unknown, to violate Title 18, United States Code, Sections 1341, 1343, and 660, that is to use and cause to be used the facilities of the United States mails and wire communications in interstate and foreign commerce in the execution of a scheme and artifice to defraud the Berliner Bank and syndicate of German Banks, the American Contract Company, the Penn Central Transportation Company, and their respective shareholders, officers and employees (not including Defendants BEVAN and GERSTNECKER); and to wilfully misapply, wilfully cause to be misapplied, and wilfully permit to be misapplied, the monies, funds and property of the Penn Central Transportation Company and its aforesaid wholly owned subsidiary, American Contract Company, used in interstate commerce.

6. Among the means by which the Defendants would carry out such scheme were the following:

1. On or about September 17, 1969, the Penn Central Transportation Company caused American Contract Company to borrow the sum of thirty-nine million, two hundred thousand German Marks (DM 39,200,000.00), approximately ten million dollars ($10,000,000.00), from a syndicate of German Banks represented by the Berliner Bank, West Berlin, Germany. Under the stated terms of such loan, the loan proceeds were to be used to finance the rehabilitation of rundown railroad cars and equipment used by the Penn Central Transportation Company in its business; the American Contract Company was obligated to repay the loan with interest to the syndicate of German Banks; the Penn Central Transportation Company agreed to guarantee that obligation; and the loan was to be collateralized by the assignment to the aforesaid Banks of title to the railroad cars and equipment rehabilitated by means of the loan proceeds.

.2. On or about September 18, 1969, the entire loan proceeds of thirty-nine million, two hundred thousand German Marks (DM 39,200,000.00), approximately ten million dollars ($10,000,000.00), were transferred to the account of the aforesaid FIRST FINANCIAL TRUST, REG., at the Bank of Lichtenstein, Vaduz, Lichtenstein.

3. On or about September 22, 1969, the aforesaid loan proceeds were credited to the account of FIRST FINANCIAL TRUST at the Bank in Lichtenstein, and on the same day First Financial Trust caused a portion of such loan proceeds, to wit: sixteen million, eight hundred thousand German Marks (DM 16,800,000.00), approximately four million, two hundred thousand dollars ($4,200,000.00), to be paid over and transferred to the account of Vileda Anstalt, a Lichtenstein corporation owned directly or indirectly by Defendant, FIDEL GOTZ, at the Bank in Lichtenstein.

7. Such scheme was carried out and attempted to be carried out by means of the following false and fraudulent

representations, knowingly, wilfully and intentionally made by the Defendants to the aforesaid Berliner Bank and syndicate of German Banks:

A. That the entire proceeds of the loan would be used to finance the rehabilitation of railroad cars and equipment used by the Penn Central Transportation Company in its business;

B. That as security for its loan such banks would acquire title to the railroad cars and equipment to be rehabilitated by American Contract Company pursuant to the transaction, and that they would thus receive security for their entire loan approximating thirty-nine milllion, two hundred thousand German Marks (DM 39,200,000.00) in value; and by means of the following false and fraudulent representations, knowingly, wilfully and intentionally made by such Defendants to the officers and employees of American Contract Company and the Penn Central Transportation Company (not including Defendants BEVAN and GERSTNECKER):

C. That the said FIDEL GOTZ would temporarily use a portion of the aforesaid loan proceeds in order to earn income therefrom, and that he would cause such portion of the loan proceeds to be repaid to the American Contract Company when such Company needed it;

D. That an entity called FIRST FINANCIAL TRUST, located at Vaduz, Lichtenstein, was a legitimate bank, trust, or similar business entity belonging to FIDEL GOTZ and used by him for transacting legitimate business.

8. Such representations set forth in the preceding paragraphs were false and fraudulent, as the Defendants then and there well knew, in that:

A. The Defendants intended to pay over approximately sixteen million, eight hundred thousand German Marks (DM 16,800,000.00), approximately four million, two hundred thousand dollars ($4,200,000.00), of the loan proceeds to Defendant, FIDEL GOTZ or a corporation controlled by him for his permanent use instead of

applying such portion of loan proceeds for the stated and agreed upon purpose of financing the rehabilitation of railroad cars and equipment;

B. As the result of such diversion of loan proceeds, the Berliner Bank and syndicate of German Banks would be deprived of the agreed upon security for their loan to the extent of approximately sixteen million, eight hundred thousand German Marks (DM 16,800,000.00);

C. FIDEL GOTZ would obtain such portion of loan proceeds for his own use, permanently, in satisfaction of a debt which FIDEL GOTZ claimed against the Penn Central Transportation Company, which alleged debt was disputed by such Company;

D. FIRST FINANCIAL TRUST was a Lichtenstein Corporation and business entity created and used by the Defendants solely for the purpose of obtaining and diverting the aforesaid portion of loan proceeds from American Contract Company to Defendant, FIDEL GOTZ, and a Lichtenstein Corporation controlled by him.

9. It was further a part of such device, scheme and artifice to defraud that such Defendants would seek to prevent the American Contract Company, the Penn Central Transportation Company, the Berliner Bank and syndicate of German Banks and their officer [sic] and employees, from discovering the diversion of such loan proceeds, and to delay and hinder their discovery of such diversion by, among other things:

1. Causing the Penn Central Transportation Company not to request an addtional drawdown of the remaining loan proceeds from FIRST FINANCIAL TRUST after October 23, 1969, although Penn Central Transportation Company employees wished to accomplish such a drawdown to pay for rehabilitated equipment;

2. By causing FIRST FINANCIAL TRUST to delay in responding to inquiries concerning the funds and to send American Contract Company and the Penn Central Transportation Company an accounting for the funds

which purported to justify the diversion of funds as having been done on instructions given by an authorized attorney of the Penn Central Transportation Company, when no such instructions were in fact given.

OVERT ACTS

10. In furtherance of said conspiracy and to effect the objects thereof and for the purpose of executing the aforesaid device, scheme, and artifice to defaud, and attempting to do so, Defendants committed the following Overt Acts, among others, at Philadelphia, in the Eastern District of Pennsylvania, and elsewhere:

1. On or about Septembr 9, 1969, Defendant, WILLIAM R. GERSTNECKER, had a telephone conversation with Robert W. Loder, a Penn Central Transportation Company employee, and one of his immediate subordinates.

2. On or about September 10, 1969, Defendant, JOESPH H. ROSENBAUM, caused a writing, that is a telegram, to be transmitted by means of a wire communication in interstate and foreign commerce from Philadelphia, Pennsylvania, to Vaduz, Lichtenstein.

3. On or about September 11, 1969, Defendant, FRANCIS N. ROSENBAUM, attended a meeting of Penn Central Transportation Company officers and employees, and others, at the offices of the Penn Central Transportation Company, Six Penn Center Plaza, Philadelphia, Pennsylvania.

4. On or about September 11, 1969, Defendant, JOSEPH H. ROSENBAUM, attended a meeting of Penn Central Transportation Company officers and employees, and others, at the offices of the Penn Central Transportation Company, Six Penn Center Plaza, Philadelphia, Pennsylvania.

5. On or about September 11, 1969, Defendant, WILLIAM R. GERSTNECKER, attended a meeting of Penn Central Transportation Company officers and employees, and others, at the offices of Penn Central Transportation

Company, Six Penn Center Plaza, Philadelphia, Pennsylvania.

6. On or about September 11, 1969, Defendant, DAVID C. BEVAN, attended a meeting of Penn Central Transportation Company officers and employees, and others, at the offices of the Penn Central Transportation Company, Six Penn Center Plaza, Philadelphia, Pennsylvania.

7. On or about September 11, 1969, in the office of Defendant, DAVID C. BEVAN, Defendant, JOSEPH H. ROSENBAUM, dictated a letter to be written on American Contract Company stationery and signed by its President, addressed to the Berliner Bank, Berlin, Germany.

8. On or about September 11, 1969, at Philadelphia, Defendant, FRANCIS N. ROSENBAUM, transmitted, and caused to be transmitted, by means of a wire communication in interstate and foreign commerce, a signal or sound, that is an oral communication by telephone, by placing and participating in a transatlantic telephone call to Frankfurt, Germany.

9. On or about September 18, 1969, Defendant, JOSEPH H. ROSENBAUM, caused a letter to be placed in an authorized depository for United States mail matter and transported by means of the United States mails from Six Penn Center Plaza, Philadelphia, to the Chemical Bank, New York, New York.

10. On or about October 20, 1970, at Philadelphia, in the Eastern District of Pennsylvania, Defendant, JOSEPH N. ROSENBAUM, attended and participated in a meeting with Edwin P. Rome, Counsel for the Trustees of the Penn Central Transportation Company, and other persons.

11. On or about October 20, 1970, at Philadelphia, in the Eastern District of Pennsylvania, Defendant, DAVID C. BEVAN, attended and participated in a meeting with Edwin P. Rome, Counsel for the Trustees of the

Penn Central Transportation Company, and other persons.

In violation of Title 18, United States Code, Section 371.

COUNT II

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in Paragraphs 1 through 4 of Count I of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 18, 1969, at Philadelphia, in the Eastern District of Pennsylvania, the Defendants, DAVID C. BEVAN and WILLIAM R. GERSTNECKER, being officers of the Penn Central Transportation Company, a corporation engaged in interstate commerce as a common carrier, did wilfully misapply, wilfully cause to be misapplied, and wilfully permit to be misapplied, the monies, funds and property of such corporation used in interstate commerce, to wit: the sum of four million, two hundred thousand dollars ($4,200,000.00), more or less, which sum was the property of American Contract Company, a wholly owned subsidiary of the Penn Central Transportation Company, by wilfully permitting such sum to be paid over and transmitted to FIRST FINANCIAL TRUST, Reg., Vaduz, Lichtenstein, knowing that in doing so they were subjecting such sum to the control of Defendant, FIDEL GOTZ.

In violation of Title 18, United Statess Code, Section 660.

COUNT III

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in Paragraphs 1 through 4 of Count I of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. From on or about July 25, 1969, to on or about November 1, 1970, in the Eastern District of Pennsylvania,

Defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN and WILLIAM R. GERSTNECKER, did devise and intend to devise a scheme and artifice to defraud the aforesaid Berliner Bank and syndicate of German Banks, the American Contract Company, the Penn Central Transportation Company, and their respective shareholders, officers and employees, as set forth more fully in Paragraphs 6 through 9 of Count I of this Indictment, which Paragraphs are incorporated herein by reference as fully as if set out herein at length.

3. On or about August 29, 1969, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, Defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBUAM, FIDEL GOTZ, DAVID C. BEVAN and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate commerce by means of a wire communication, that is a telegram, from John E. Young, New York, New York, to Robert W. Loder, Penn Central Company, 1138 Transportation Center Plaza, Philadelphia, Pennsylvania, certain signs, signals and sounds received at Philadelphia, in the Eastern District of Pennsylvania.

In violation of Title 18, United States Code, Section 1343.

COUNT IV

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about August 29, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly cause to be delivered according to the directions thereon a letter from JOSEPH H. ROSENBAUM, Washington, D.C., addressed to Robert Loder, Penn Central Company, Six Penn Center Plaza, Philadelphia,

Pennsylvania, which letter was sent and delivered by the Post Office Department of the United States.

In violation of Title 18, United States Code, Section 1341.

COUNT V

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 10, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate and foreign commerce by means of a wire communication, that is a telegram, from Penn Central Company, Philadelphia, Pennsylvania, to FIRST FINANCIAL TRUST, Reg., Comershaus, Vaduz, Lichtenstein, certain signs, signals, and sounds.

In violation of Title 18, United States Code, Section 1343.

COUNT VI

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 11, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate and foreign commerce by means of a wire communication, a signal or sound, that is, an

oral communication by telephone between FRANCIS N. ROSENBAUM, Philadelphia, Pennsylvania, and GERHARD MAY, Frankfurt, Germany.

In violation of Title 18, United States Code, Section 1343.

COUNT VII

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 12, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate and foreign commerce by means of a wire communication, that is a telegram, from Penn Central Company, Philadelphia, Pennsylvania, to Berliner Bank, AG Hardenbergstrasse 32, Berlin, Germany, certain signs, signals, and sounds.

In violation of Title 18, United States Code, Section 1343.

COUNT VIII

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 12, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly place and cause to be placed in an authorized depository for mail matter, a letter

from Penn Central Company, Philadelphia, Pennsylvania, addressed to Berliner Bank AG, Hardenbergstrasse 32, Berlin, Germany, to be sent by the Post Office Department of the United States.

In violation of Title 18, United States Code, Section 1341.

COUNT IX

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 12, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly place and cause to be placed in an authorized depository for mail matter, a letter from Penn Central Company, Philadelphia, Pennsylvania, addressed to COLONEL JOSEPH H. ROSENBAUM, 824 Connecticut Avenue, N.W., Washington, D.C., which letter was sent and delivered by the Post Office Department of the United States.

In violation of Title 18, United States Code, Section 1341.

COUNT X

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 18, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and

WILLIAM R. GERSTNECKER, did knowingly place and cause to be placed in an authorized depository for mail matter, a letter from Penn Central Company, Philadelphia, Pennsylvania, addressed to Mr. Peter K. Schumann, Corporate Finance Division, Chemical Bank, 20 Pine Street, New York, New York, 10015, which letter was sent and delivered by the Post Office Department of the United States.

In violation of Title 18, United States Code, Section 1341.

COUNT XI

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 18, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly place and cause to be placed in an authorized depository for mail matter, a letter from Penn Central Company addressed to COLONEL JOSEPH H. ROSENBAUM, 824 Connecticut Avenue, N.W., Washington, D.C., which letter was sent and delivered by the Post Office Department of the United States.

In violation of Title 18, United States Code, Section 1341.

COUNT XII

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 18, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and

attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate commerce by means of a wire communication, a signal or sound, that is, an oral communication by telephone between Robert Loder and Theodore Verlander, Philadelphia, Pennsylvania, and Peter Schumann, New York, New York.

In violation of Title 18, United States Code, Section 1343.

COUNT XIII

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 18, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate commerce, by means of a wire communication, a signal or sound, that is, an oral communication by telephone between Heinz Gottwald and Peter Schumann, New York, New York, and Robert Loder and Theodore Verlander, Philadelphia, Pennsylvania.

In violation of Title 18, United States Code, Section 1343.

COUNT XIV

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 22, 1969, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of

executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly cause to be delivered according to the directions thereon, a letter from Joseph H. Rosenbaum Washington, D.C., addressed to Robert W. Loder, Six Penn Center Plaza, Philadelphia, Pennsylvania, which letter was sent and delivered by the Post Office Department of the United States.

In violation of Title 18, United States Code, Section 1341

COUNT XV

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about July 3, 1970, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly cause to be delivered according to the directions thereon a letter from Alfred Hansi, Berliner Bank, West Berlin, Germany, addressed to Mr. R.W. Loder, Assistant Vice President-Corporate, Penn Central Transportation Company, Six Penn Center Plaza, Philadelphia, Pennsylvania, which letter was delivered by the Post Office Department of the United States.

In violation of Title 18, United States Code, Section 1341.

COUNT XVI

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about July 21, 1970, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate commerce by means of a wire communication, a signal or sound, that is, an oral communication by telephone between James E. Dermond, Philadelphia, Pennsylvania, and W.W. Riley, Wilmington, Delaware.

In violation of Title 18, United States Code, Section 1343.

COUNT XVII

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about July 23, 1970, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate commerce by means of a wire communication, a signal or sound, that is, an oral communication by telephone between James E. Dermond, Philadelphia, Pennsylvania, and W.W. Riley, Wilmington, Delaware,

In violation of Title 18, United States Code, Section 1343.

COUNT XVIII

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about July 29, 1970, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate commerce by means of a wire communication, a signal or sound, that is an oral communication by telephone between Jonathan O'Herron, Philadelphia, Pennsylvania, and Joseph H. Rosenbaum, Washington, D.C.

In Violation of Title 18, United States Code, Section 1343.

COUNT XIX

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about July 31, 1970, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate commerce by means of a wire communication, a signal or sound, that is, an oral communication by telephone between James E. Dermond, Philadelphia, Pennsylvania, and W.W. Riley, Wilmington, Delaware, received at Philadelphia, in the Eastern District of Pennsylvania.

In violation of Title 18, United States Code, Section 1343.

COUNT XX

THE AND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraph one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about August 14, 1970, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate commerce, by means of a wire communication, signal or sound, that is, an oral communication by telephone between James E. Dermond, Philadelphia, Pennsylvania, and W.W. Riley, Wilmington, Delaware.

In violation of Title 18, United States Code, Section 1343.

COUNT XXI

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about September 15, 1970, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate commerce by means of a wire communication, a signal or sound, that is, an oral communication by telephone between James E. Dermond, Philadelphia, Pennsylvania, and W.W. Riley, Wilmington, Delaware.

In violation of Title 18, United States Code, Section 1343.

COUNT XXII

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about October 19, 1970, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate and foreign commerce by means of a wire communication, that is a telegram from FIRST FINANCIAL TRUST, Paris, France, to "BLARKA", Philadelphia, Pennsylvania, certain signs, signals, and sounds, received at Philadelphia, in the Eastern District of Pennsylvania.

In violation of Title 18, United States Code, Section 1343.

COUNT XXIII

THE GRAND JURY FURTHER CHARGES THAT:

1. All of the allegations contained in paragraphs one and two of Count Three of this Indictment are realleged and incorporated herein by reference as though each allegation were set forth herein at length.

2. On or about October 20, 1970, at Philadelphia, in the Eastern District of Pennsylvania, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants, JOSEPH H. ROSENBAUM, FRANCIS N. ROSENBAUM, FIDEL GOTZ, DAVID C. BEVAN, and WILLIAM R. GERSTNECKER, did knowingly transmit and cause to be transmitted in interstate and foreign commerce, by means of a wire communication, that is a telegram from Edwin P. Rome, Esquire, Philadelphia, Pennsylvania, to Dr. Peter Marxer, Vaduz, Lichtenstein, certain signs, signals, and sounds.

In violation of Title 18, United States Code, Section 1343.

A True Bill

/s/ EDWARD H. HARRIS, JR.
Foreman

/s/ ROBERT E. J. CURRAN
United States Attorney

FILED: March 17, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA v. PAUL LEVINE	CRIMINAL NO. 80-00112 VIOLATION: 18 U.S.C. § 660 (Embezzlement 9 counts)

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES:

1. At all times pertinent to this Indictment, the Yellow Cab Company of Philadelphia was a Pennsylvania corporation engaged in the operation of a fleet of taxicabs in intrastate and interstate commerce.

2. At all times relevant to this Indictment, the Yellow Cab Company of Camden was a New Jersey corporation engaged in the operation of a fleet of taxicabs in intrastate and interstate commerce.

3. On or about February 28, 1973, the defendant, PAUL LEVINE, was elected Chairman of the Board of Directors and Chief Executive Officer of the Yellow Cab Company of Philadelphia.

4. As a result thereof, PAUL LEVINE assumed full and complete management of Yellow Cab Company of Philadelphia during all times relevent to this Indictment.

5. On or about February 28, 1973, the defendant, PAUL LEVINE, was elected Chairman of the Board of Directors and Chief Executive Officer of the Yellow Cab Company of Camden.

6. As a result thereof, PAUL LEVINE assumed full and complete management of Yellow Cab Company of Camden during all times relevant to this Indictment.

7. At all times relevant to this Indictment, Portable Toilets, Inc., was a Delaware corporation and controlled by the defendant, PAUL LEVINE.

8. On or about July 6, 1973, in the Eastern District of Pennsylvania, PAUL LEVINE, defendant herein, being director, officer and manager of a corporation engaged in commerce as a common carrier (namely, Yellow Cab Company of Philadelphia), did embezzle, abstract and wilfully misapply, and cause to be embezzled, abstracted and wilfully misapplied, and wilfully permitted to be misapplied, moneys, funds and assets of Yellow Cab Company of Philadelphia, arising from and used in such commerce in whole or in part (namely, the sum of $5,628), and wilfully and knowingly converted the same to his own use and to the use of another (namely, Portable Toilets, Inc.).

All in violation of Title 18, United States Code, Section 660 and 2(b).

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

1. The allegations of paragraphs one through seven of Count One are realleged as if set forth fully herein.

2. On or about July 12, 1973, in the Eastern District of Pennsylvania, PAUL LEVINE, defendant herein, being director, officer and manager of a corporation engaged in commerce as a common carrier (namely, Yellow Cab Company of Philadelphia), did embezzle, abstract and wilfully misapply, and cause to be embezzled, abstracted and wilfully misapplied, and wilfully permitted to be misapplied, moneys, funds and assets of Yellow Cab Company of Philadelphia arising from and used in such commerce in whole or in part (namely, the sum of $6,501.14), and wilfully and knowingly converted the same to his own use and to the use of another (namely, Portable Toilets, Inc.).

All in violation of Title 18, United States Code, Section 660 and 2(b).

COUNT THREE

THE GRAND JURY FURTHER CHARGES:

1. The allegations of paragraphs one through seven of Count One are realleged as if set forth fully herein.

2. On or about July 18, 1973, in the Eastern District of Pennsylvania, PAUL LEVINE, defendant herein, being director, officer and manager of a corporation engaged in commerce as a common carrier (namely, Yellow Cab Company of Philadelphia), did embezzle, abstract and wilfully misapply, and cause to be embezzled, abstracted and wilfully misapplied, and wilfully permitted to be misapplied, moneys, funds and assets of Yellow Cab Company of Philadelphia arising from and used in such commerce in whole or in part (namely, the sum of $16,365.23), and wilfully and knowingly converted the same to his own use and to the use of another (namely, Portable Toilets, Inc.).

All in violation of Title 18, United States Code, Section 660 and 2(b).

COUNT FOUR

THE GRAND JURY FURTHER CHARGES:

1. The allegations of paragraphs one through seven of Count One are realleged as if set forth fully herein.

2. On or about September 26, 1973, in the Eastern District of Pennsylvania, PAUL LEVINE, defendant herein, being director, officer and manager of a corporation engaged in commerce as a common carrier (namely, Yellow Cab Company of Philadelphia), did embezzle, abstract and wilfully misapply, and cause to be embezzled, abstracted and wilfully misapplied, and wilfully permitted to be misapplied, moneys, funds and assets of Yellow Cab Company of Philadelphia arising from and used in such commerce in whole or in part (namely, the sum of $7,621.98), and wilfully and knowingly converted the same to his own use and to the use of another (namely, Portable Toilets, Inc.).

All in violation of Title 18, United States Code, Section 660 and 2(b).

COUNT FIVE

THE GRAND JURY FURTHER CHARGES:

1. The allegations of paragraphs one through seven of Count One are realleged as if set forth fully herein.

2. On or about November 6, 1973, in the Eastern District of Pennsylvania, PAUL LEVINE, defendant herein, being director, officer and manager of a corporation engaged in commerce as a common carrier (namely, Yellow Cab Company of Philadelphia), did embezzle, abstract and wilfully misapply, and cause to be embezzled, abstracted and wilfully misapplied, and wilfully permitted to be misapplied, moneys, funds and assets of Yellow Cab Company of Philadelphia arising from and used in such commerce in whole or in part (namely, the sum of $4,750.00), and wilfully and knowingly converted the same to his own use and to the use of another (namely, Portable Toilets, Inc.).

All in violation of Title 18, United States Code, Section 660 and 2(b).

COUNT SIX

THE GRAND JURY FURTHER CHARGES:

1. The allegations of paragraphs one through seven of Count One are realleged as if set forth fully herein.

2. On or about October 1, 1973, in the Eastern District of Pennsylvania, PAUL LEVINE, defendant herein, being director, officer and manager of a corporation engaged in commerce as a common carrier (namely, Yellow Cab Company of Philadelphia), did embezzle, abstract and wilfully misapply, and cause to be embezzled, abstracted and wilfully misapplied, and willfully permitted to be misapplied, moneys, funds and assets of Yellow Cab Company of Philadelphia arising from and used in such commerce in whole or in part (namely, the sum of $15,000.00), and wilfully and knowingly converted the same to his own use and to the use of another (namely, Portable Toilets, Inc.).

All in violation of Title 18, United States Code, Section 660 and 2(b).

COUNT SEVEN

THE GRAND JURY FURTHER CHARGES:

1. The allegations of paragraphs one through seven of Count One are realleged as if set forth fully herein.

2. On or about December 28, 1973, in the Eastern District of Pennsylvania, PAUL LEVINE, defendant herein, being director, officer and manager of a corporation engaged in commerce as a common carrier (namely, Yellow Cab Company of Philadelphia), did embezzle, abstract and wilfully misapply, and cause to be embezzled, abstracted and wilfully misapplied, and wilfully permitted to be misapplied, moneys, funds and assets of Yellow Cab Company of Philadelphia arising from and used in such commerce in whole or in part (namely, the sum of $9,332.00), and wilfully and knowingly converted the same to his own use and to the use of another (namely, Portable Toilets, Inc.).

All in violation of Title 18, United States Code, Section 660 and 2(b).

COUNT EIGHT

THE GRAND JURY FURTHER CHARGES:

1. The allegations of paragraphs one through seven of Count One are realleged as if set forth fully herein.

2. On or about December 28, 1973, in the Eastern District of Pennsylvania, PAUL LEVINE, defendant herein, being director, officer and manager of a corporation engaged in commerce as a common carrier (namely, Yellow Cab Company of Philadelphia), did embezzle, abstract and wilfully misapply, and caused to be embezzled, abstracted and wilfully misapplied, and wilfully permitted to be misapplied, moneys, funds and assets of Yellow Cab Company of Philadelphia arising from and used in such commerce in whole or in part (namely, the sum of $27,000.00), and wilfully and knowingly converted the same to his own use and to the use of another (namely, Portable Toilets, Inc.).

All in violation of Title 18, United States Code, Section 660 and 2(b).

COUNT NINE

THE GRAND JURY FURTHER CHARGES:

1. The allegations of paragraghs one through seven of Count One are realleged as if set forth fully herein.

2. On or about December 6, 1974, in the Eastern District of Pennsylvania, PAUL LEVINE, defendant herein, being director, officer and manager of a corporation engaged in commerce as a common carrier (namely, Yellow Cab Company of Philadelphia), did embezzle, abstract and wilfully misapply, and cause to be embezzled, abstracted and wilfully misapplied, and wilfully permitted to be misapplied, moneys, funds and assets of Yellow Cab Company of Philadelphia arising from and used in such commerce in whole or in part (namely, the sum of $10,427.29), and wilfully and knowingly converted the same to his own use and to the use of another (namely, Portable Toilets, Inc.).

All in violation of Title 18, United States Code, Section 660 and 2(b).

A True Bill:

.....

Foreman

.....

PETER F. VAIRA
United States Attorney

FILED: September 19, 1979
Joseph McElroy, Jr., *Clerk*

IN THE UNITED STATES DISTRICT COURT
For The Northern District of Texas
Amarillo Division

UNITED STATES OF AMERICA v. CHARLES WILLIAM HOWARD	No. CR 2-79-20

THE GRAND JURY CHARGES:

On or about the 4th day of August, 1978, in the Amarillo Division of the Northern District of Texas, CHARLES WILLIAM HOWARD, defendant, being an employee, that is a truck driver for Dalby Transfer and Storage Company, Inc., a corporation engaged in commerce as a common carrier, and while riding in and upon a motor truck moving in interstate commerce from the State of New Mexico to the State of Texas, willfully and knowingly did embezzle, steal and convert to his own use the sum of $1,075.37, of the moneys and property of said carrier, arising and accruing from such commerce, which said moneys and property had come into the possession of CHARLES WILLIAM HOWARD by virtue of his employment by the said Dalby Transfer and Storage Company, Inc.

In violation of Title 18, United States Code, Section 660.

A True Bill.

_____
Foreman

/s/ KENNETH J. MIGHELL
United States Attorney

/s/ BOB D. SLOUGH
Assistant United States Attorney

FILED: November 11, 1975
V. Bailey Thomas, *Clerk*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA vs. LONZO GRAHAM	CR NO. 75-B-304

INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1

That on or about the 25th day of May 1973, in the Southern District of Texas, and within the jurisdiction of this Court, LONZO GRAHAM being a common carrier engaged in interstate commerce, and while riding in and upon a motor truck, moving in interstate commerce, San Benito, Texas to States of Georgia, South Carolina, and North Carolina, wilfully and knowingly did embezzle, steal and convert to his own use shipment of onions, value of Six Thousand Three Hundred and no/100 ($6,300.00) Dollars, the property of Alexander Marketing Company, arising and occurring from such commerce, which said moneys and property had come into the possession of LONZO GRAHAM by virtue of his contract to act as a common carrier with said Alexander Marketing Company.

(VIOLATION: Title 18, United States Code, Section 660)

COUNT 2

That on or about the 21st day of May, 1975, LONZO GRAHAM devised and intended to devise a scheme and artifice to defraud, and to obtain money by false and fraudulent

pretenses, representations and promises from the Alexander Marketing Company, San Benito, Texas well knowing at the time that the pretenses, representations and promises would be and were false when made, and which scheme and artifice to defraud and to obtain money by false and fraudulent pretenses, representations and promises so devised and intended to be devised by the said defendant, was in substance as follows:

> 1. It was a part of the scheme and artifice to defraud that the defendant would telephone from Jackson, Mississippi to the Alexander Marketing Company, San Benito, Texas, claiming that his truck had broke [sic] down and that he must be wired money in order to complete delivery of a shipment of produce.

That on or about the 21st day of May, 1975, in the Southern District of Texas, and within the jurisdiction of this Court, LONZO GRAHAM, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so did transmit and cause to be transmitted in interstate commerce by means of a wire communication, that is, a Western Union telegram between San Benito in the State of Texas, and Jackson in the State of Mississippi, certain signs, signals and sounds.

(VIOLATION: Title 18, United States Code, Section 1343)

A True Bill:

.....
Foreman of the Grand Jury

EDWARD B. MCDONOUGH, JR.
United States Attorney

/s/ CHARLES F. SANDOVAL
Assistant United States Attorney

FILED: July 8, 1976
V. Bailey Thomas, *Clerk*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA vs. JAMES RICHARD BLOUNT	Cr. No. 76-B-307

INDICTMENT

THE GRAND JURY CHARGES:

That on or about April 12, 1976, within the Brownsville Division of the Southern District of Texas, and elsewhere, JAMES RICHARD BLOUNT, being an employee of National Van Lines, a common carrier, and riding in a National Van Lines van moving in interstate commerce did steal and wilfully misapply Seven Hundred Forty-four and 40/100 Dollars ($744.40) of the funds of said carrier accrued from the interstate activities of said carrier, in violation of Section 660, Title 18, United States Code.

A True Bill:

.....
Foreman of the Grand Jury

EDWARD B. MCDONOUGH, JR
United States Attorney

/s/ CHARLES LEWIS
Assistant United States Attorney

FILED: November 21, 1978
V. BAILEY THOMAS, *Clerk*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATE OF AMERICA v. ADAN MEJIA GONZALEZ	Cr No. B-77-424-S1

INDICTMENT

THE GRAND JURY CHARGES:

That on or about April 12, 1977, in the Brownsville Division of the Southern District of Texas, ADAN MEJIA GONZALEZ, being an employee of Reyna Trucking, Weslaco, Texas, engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier, moving in interstate commerce from Hidalgo, State of Texas, to Pittsburgh, State of Pennsylvania, wilfully and knowingly did embezzle, steal and convert to his own use the sum of Eight Thousand Dollars ($8,000), of the moneys and property, to-wit: 42,000 pounds of watermelons, of Tex-Sandia, arising and occurring from such commerce which said moneys and property had come into the possession of ADAN MEJIA GONZALEZ by virtue of his employment as agent of Reyna Trucking, in violation of Section 660, Title 18, United States Code.

A True Bill:

.....
Foreman of the Grand Jury

J.A. "TONY" CANALES
United States Attorney

/s/ RUBEN DE LUNA
Assistant United States Attorney

FILED: August 31, 1977
Joseph McElroy, Jr., *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA v. LOUIS RAY WHITE	CRIMINAL NO. 3-77-290

The Grand Jury charges:

On or about June 20, 1977, in the Dallas Division of the Northern District of Texas, LOUIS RAY WHITE, defendant, being an employee, that is, a driver for Graebel/6.S.W./Dallas, Inc., a corporation, doing business as Graebel Movers, Dallas, Texas an agent of Allied Van Lines, Inc., a corporation, engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier, moving in interstate commerce from Dayton, Ohio, to Las Vegas, Nevada, and thence to Corsicana, Texas, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $3,097.28 of the money and funds of said carrier, arising and accruing from such commerce, which said money and funds had come into the possession of LOUIS RAY WHITE by virtue of his employment with the aforementioned common carrier.

A violation of Title 18, United States Code, Section 660.

A True Bill.

/s/ GERALD L. JORDAN
Foreman

/s/ KENNETH J. MIGHELL
United States Attorney

/s/ JAY ETHINGTON,
Assistant United States Attorney
1100 Commerce St., Room 16G28
Dallas, Texas 75242
PH: 214-749-3491

FILED: August 17, 1976
Joseph McElroy, Jr., *Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA vs. ROBERT ALDIN NEWMAN	Criminal No. 4-76-94

The Grand Jury charges:

On or about August 10, 1975, in the Fort Worth Division of the Northern District of Texas, ROBERT ALDIN NEWMAN, defendant, being an employee, that is, a driver for Fort Worth Warehouse and Storage Company, Inc., a corporation, doing business as Abbott Warehouse and Storage Company, Fort Worth, Texas, an agent of Aero Mayflower Transit Company, Inc., a corporation, engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier, moving in interstate commerce from Arlington, Texas, to Norman, Oklahoma, and thence to Fort Worth, Texas, wilfully and knowingly did embezzle, steal and convert to his own use the sum of $1,000.00 of the money and funds of said carrier, arising and accruing from such commerce, which said money and funds had come into the possession of ROBERT ALDIN NEWMAN by virute [sic] of his employment with the said Fort Worth Warehouse and Storage Company, Inc., doing business as Abbott Warehouse and Storage Company, Fort Worth, Texas.

A violation of Title 18, United States Code, Section 660.

A True Bill:

.....
Foreman

/s/ MICHAEL P. CARNES
United States Attorney

/s/ CONARD L. FLORENCE
Assistant United States Attorney

FILED: May 11, 1978
RUTH W. LA FAVE, *Clerk*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, *Plaintiff,* v. WILLIAM ANTHONY PRICE, *Defendant.*	CR 78 - Cr 58 CASE NO. (T. 18, U.S.C. § 660) INDICTMENT

THE GRAND JURY CHARGES THAT:

On or about April 13, 1978 and continuing through on or about May 4, 1978 at Sheboygan in the State and Eastern District of Wisconsin and elsewhere,

WILLIAM ANTHONY PRICE,

being an employee of Charles Gongaware, who at all times material hereto was a common carrier engaged in commerce, while riding in a vehicle of such carrier, to-wit, a tractor, moving in interstate commerce, did willfully misapply the assets of said carrier, to-wit, the aforesaid tractor, which tractor was used in such commerce, and did willfully and knowingly convert the same to his own use,

All in violation of Title 18, United States Code, Section 660.

A True Bill:

_____
Foreperson
Date: 5/11/78

/s/ JOAN F. KESSLER
United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, *Plaintiff,* v. NICHOLAS J. HEIDE, JR. *Defendant.*	Case No. 80-CR-157 (T. 18, U.S.C. § 660) INDICTMENT

THE GRAND JURY CHARGES:

That between on or about the 1st day February, 1979, and on or about the 19th day of March, 1979, in the Eastern District of Wisconsin,

NICHOLAS J. HEIDE, JR.,

being an employee, that is, a truck driver for Zdon Enterprises, a firm engaged in commerce as a common carrier, and while riding in and upon a motor truck of such carrier moving in interstate commerce willfully and knowingly did embezzle, steal, misapply and convert to his own use the sum of approximately $1,870.65, of the moneys and property of said carrier, arising and accruing from such commerce, which said moneys and property had come into the possession of NICHOLAS J. HEIDE, JR., by virtue of his employment as agent of the said Zdon Enterprises.

All in violation of Title 18, United States Code, Section 660.

A True Bill:

/s/ TERRENCE M. MATTHEWS
Foreman

Date: 12/9/80

/s/ JOAN F. KESSLER
United States Attorney

Office-Supreme Court, U.S.
FILED
JUL 27 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1950

In the Supreme Court of the United States

OCTOBER TERM, 1980

VINCENT E. MARINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

LAWRENCE G. WALLACE
Acting Solicitor General

D. LOWELL JENSEN
Assistant Attorney General

JOEL M. GERSHOWITZ
Attorney
Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether, in the prosecution of petitioner under 18 U.S.C. 660, the government adequately charged and proved the offense established thereunder, *i.e.*, that petitioner aided in the embezzlement of moneys of a "firm, association, or corporation engaged in commerce as a common carrier * * * arising or accruing from, or used in, such commerce, in whole or in part."

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1950

VINCENT E. MARINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A18) is reported at 639 F.2d 882.

JURISDICTION

The judgment of the court of appeals (Pet. App. A19) was entered on January 22, 1981. A petition for rehearing with a suggestion for en banc consideration was denied (Pet. App. A20) on March 18, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 660 provides in pertinent part:

> Whoever, being a president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, or whoever, being an employee of such common carrier riding in or upon any railroad car, motortruck, steamboat, vessel, aircraft or other vehicle of such carrier moving in interstate commerce, embezzles, steals, abstracts, or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.
>
> * * * * *

STATEMENT

1. Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on three counts of embezzling funds of a common carrier, in violation of 18 U.S.C. 660 and 18 U.S.C. 2, and one count of conspiring to commit that offense, in violation of 18 U.S.C. 371. He was sentenced to imprisonment for a term of one year and one day and to a two-year term of probation. The court of appeals affirmed (Pet. App. A1-A18).

The evidence adduced at trial is recounted in the opinion of the court of appeals (Pet. App. A3-A4). It showed that during 1974 and 1975 petitioner was president and part owner of Marine Repair Services,

Inc., a New York company engaged in the repair of maritime equipment. During the summer of 1974, Keith Nelson and John Marano, executives of the Prudential Grace Lines steamship company, a carrier whose revenues are derived exclusively from foreign commerce, obtained bids from Marine Repair and other companies for the repair or modification of 65 of Prudential's container chassis.[1] Nelson and Marano accepted Marine Repair's bid, which was substantially higher than others they had received, in return for Marine Repair's agreement to pay a rebate of $900 per chassis in roughly equal shares to Marano, Nelson, and Anthony Scotto of the International Longshoremen's Union.

Between October 1974 and July 1975, Marine Repair modified approximately 52 chassis for Prudential. Marine Repair received payment for the work both through invoices submitted directly to Nelson for special rush payments and through a second set of invoices submitted for the same work through routine billing channels. These payments were made from Prudential's general fund (Pet. App. A11). Nelson and Marano each received kickback payments, Nelson's payments alone exceeding $13,000.

2. The indictment upon which petitioner was tried and convicted charged, in relevant part, that petitioner and others

> did unlawfully, knowingly and wilfully embezzle, steal, abstract, wilfully convert to their own use and the use of others, and wilfully misapply and perimt to be misapplied monies, funds,

[1] A container chassis resembles a flatbed truck trailer. When it is mated with a cargo container, the combination resembles a conventional truck trailer.

> credits, securities, properties and assets of Prudential Lines, Inc. arising and accruing from, and used in, in whole and in part, Prudential Lines, Inc.'s business as a firm and corporation engaged in commerce as a common carrier * * *.

(Pet. App. A26.) Prior to the commencement of petitioner's trial, petitioner moved to dismiss the indictment on the ground, *inter alia*, that it did not charge an offense under 18 U.S.C. 660, arguing that the indictment insufficiently alleged that the funds unlawfully diverted arose from interstate commerce (see Pet. 3). The motion was denied without opinion on March 5, 1980 (Tr. 34).

In charging the jury, the district court first read the relevant portions of Section 660 (App. 1558).[2] It further instructed the jurors, *inter alia*, that in order to convict they had to find that Marano or Nelson had converted funds or assets of "Prudential Lines arising or accruing from or used in, in whole or in part * * * commerce [as a common carrier]" and that petitioner had "knowingly and willfully aided and abetted" that conversion (*id.* at 1559). The district court rejected petitioner's request to charge that Prudential's transactions with Marine Repair were all intrastate and that this fact was to be considered in determining whether the monies embezzled from Prudential arose from interstate commerce (*id.* at 45; App. Exh. Vol. 188). In addition, the court instructed the jury (App. 1562) that

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[2] "App." refers to the Joint Appendix filed in the court of appeals. "App. Exh. Vol." refers to the volume of exhibits which forms a part of the Joint Appendix filed in the Court of Appeals.

> it is not necessary for the Government to prove that the very dollars, monies, or funds [embezzled] * * * were at some point actually used by Prudential Lines in commerce. The Government need only show that the conversion or misapplication involved funds or accounts which included monies, such as operating income, arising or accruing from, or used in, in whole or in part, Prudential's business as a common carrier engaged in commerce.

3. On appeal, petitioner advanced three basic arguments, only one of which is preserved—and that in a narrowed form—in the petition for certiorari. One contention raised on appeal was that an offense under 18 U.S.C. 660 had neither been properly charged in the indictment nor proven at trial, and that the district court's instructions to the jury were likewise defective (Pet. Br. 25-32).[3] The indictment, the government's proof, and the jury instructions were each argued to be defective for two related but distinct reasons. The first was the alleged failure, respectively, to charge, prove, or require proof that the funds involved stemmed from interstate, rather than foreign commerce (Pet. Br. 17, 28-30). The second defect alleged was failure sufficiently to charge, prove, or instruct that the embezzled funds themselves arose from (interstate) commerce (Pet.

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[3] The additional arguments advanced on appeal were (1) that Keith Nelson was not a sufficiently responsible officer of Prudential Graces Lines to render his conduct a violation of 18 U.S.C. 660, and that petitioner accordingly could not be held guilty for aiding that conduct; and (2) that certain evidence had been improperly admitted against petitioner. The court of appeals rejected these contentions (Pet. App. A12-A18). "Pet Br." refers to petitioner's opening brief filed in the court of appeals.

Br. 16-25). The government responded on the first point that Section 660 proscribes embezzlement of funds from foreign as well as domestic commerce. On the second point, acknowledging that Section 660 requires that the converted funds as well as the victim be linked to commerce, the government argued that this second nexus had been adequately charged, proven, and embodied in the instructions to the jury. In the government's view, however, it was not necessary to trace the funds embezzled to any particular commercial transaction.

The court of appeals affirmed, rejecting each of petitioner's contentions. The court first held (Pet. App. A5-A6) that Section 660 is violated by embezzlement of funds arising from foreign, as well as interstate, commerce.[4] Second, the court of appeals found no reversible insufficiency in the indictment, proof, or jury instructions. Reviewing both the plain language and the legislative history of the pertinent portion of 18 U.S.C. 660, the court of appeals ruled that "the statute requires that the embezzled funds themselves be connected with foreign or interstate commerce, not [merely] that the funds be

[4] The court noted that Section 660 originated as Section 9 of the Clayton Act, ch. 323, 38 Stat. 733; that the portion of Section 660 applicable to executive defalcations refers to embezzled funds arising from "commerce" without any qualification; and that, under the Clayton Act, commerce is defined to include both foreign and interstate commerce. The court further noted that the only aspect of Section 660 which is limited in application to interstate commerce is a provision with a separate statutory origin, not applicable here, governing thefts by employees, rather than executives, which was combined with Section 9 of the Clayton Act to create the present Section 660 in the 1948 codification of the Criminal Code. That codification, the court of appeals noted, citing *United States* v. *Cook*, 384 U.S. 257, 260 (1966), was not intended to affect the substance of the underlying statutes.

connected to a business which is engaged in commerce" (Pet. App. A12). The court rejected, however, petitioner's contention "that the funds must be traced to a specific transaction in * * * commerce" (Pet. App. A10). Based upon this interpretation of the statute, the court of appeals concluded that the indictment, proof, and jury instructions were sufficient. As to the indictment the court stated (*id.* at A11):

> Although more precise draftsmanship * * * would have been preferable, the indictment may be fairly read to charge that the funds [embezzled] were in fact derived from foreign or interstate commerce. * * * In this case, any money accruing from or used in Prudential's steamship business must be largely composed of funds which arise from or are used in foreign commerce and which therefore satisfy the jurisdictional requirements of section 660.

Similiarly, as to the proof, the court noted that Prudential's exclusive business was shown to be foreign commerce, and the source of the embezzled funds its general account. Noting that Section 660 expressly allows prosecution where only part of the funds stem from commerce, the court found the conviction sufficiently supported by the evidence (Pet. App. A11-A12). Finally, the court found no reversible error in the jury instructions, noting that Section 660 had been read to the jury and stating that while the charge, like the indictment, could have been somewhat more precise, it had no defect of consequence when viewed in light of the facts of the case (*id.* at A12).

ARGUMENT

The decision of the court of appeals, on which we rely, is correct and does not conflict with any decision

of this Court or any other court of appeals. This case presents no question of general importance warranting further review by this Court.[5]

1. a. Petitioner misapprehends the decision of the court of appeals and accordingly mistakes the question open for review. Contrary to petitioner's contention, both the federal prosecutor in the Southern District of New York and the court of appeals acknowledged that Section 660 requires proof that the funds embezzled arose in whole or in part from interstate or foreign commerce (Pet. App. A12). Accordingly, the only ground upon which the judgment can properly be attacked involves the question whether the court of appeals correctly concluded that there was no deficiency in the indictment, proof, or jury instructions that substantially impaired petitioner's rights—a question not even addressed by the petition.[6] Nor is there any basis in the statutory language, the legislative history cited by petitioner,

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[5] While the formulation of the question presented and the text of the petition casually assert that the government insufficiently established a link between the embezzled funds and interstate commerce, petitioner has apparently abandoned the contention, pressed in the court of appeals, that embezzlement of funds arising from foreign commerce does not violate Section 660. No argument in support of that contention is made in the petition, and we accordingly assume that it has not been preserved. In any event, the contention was properly rejected for the reasons stated by the court of appeals (Pet. App. A5-A6; see note 4, *supra*).

[6] The petition does not challenge any of the court of appeals' specific conclusions as to the adequacy of the indictment, the proof, or the charge. Even the "Question Presented" is framed so as to challenge only the indictment and proof and makes no mention of the jury charge. Rather than identify a prejudicial error, petitioner is content to quarrel in the abstract with an interpretation of the statute that, we submit, was not adopted by the court below.

logic, or precedent for petitioner's apparent contention that the embezzled funds must be traced to a particular transaction in commerce. In any event, as the court of appeals noted, Prudential's sole business and source of funds was foreign commerce, and the funds embezzled were taken from the firm's general fund—facts petitioner concedes (Pet. 1, 6). In these circumstances, there can be little question that the indictment sufficiently charged, and the proof established, a violation of 18 U.S.C. 660.[7]

b. Petitioner suggests that a direct link must be established between the embezzled funds and a particular transaction in commerce, arguing from legislative history that Congress in 1914 must have incorporated such an element in defining the offense because of a belief that this was necessary to rescue the statute from unconstitutionality. However, for the reasons stated by the court of appeals in its careful review of the legislative history (Pet. App. A7-A10), the cited debates do not support petitioner's sweeping assertion. It is true, of course, that the proposed text of what ultimately became Section 660 (see note 4, *supra*) was amended on the floor of the Senate to impose the separate requirement that the embezzled funds arise from commerce. But, as is explained above, that provision was given full effect by the decision of the court of appeals.[8]

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[7] By abandoning its contention that embezzlement of funds derived from foreign commerce does not violate the statute, see note 5, *supra*, petitioner has disavowed the only argument ever advanced which, if it were sound, might have suggested commission of prejudicial error.

[8] Petitioner's selective quotations from the legislative debates do not establish otherwise. For instance, the cited exchange between Senators Cummins and White (Pet. 10, citing

Petitioner's suggestion (Pet. 12-13) that the court of appeals' interpretation of Section 660 renders the amendment to Section 660 superfluous is inaccurate. In this case, it was shown that all revenues of the victim of embezzlement derived from foreign commerce, and that the embezzled funds were paid out of the general fund into which such revenues were paid. However, one can readily imagine circumstances in which a carrier may engage in intrastate operations, as well as interstate or foreign ones, and maintain the funds from such local operations in an account distinct from other funds. In such circumstances, the concerns expressed by individual Congressmen which led to the incorporation of the language relied upon by petitioner in Section 660 would come into play.

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51 Cong. Rec. 14036 (1914)) is simply inapposite. The exchange reveals only that under the interpretation of the Commerce Clause (Article I, Section 8, Clause 3) then entertained by some members of Congress, thefts directed against intrastate manufacturing operations might not lie within the purview of federal criminal legislation. As the additional exchange reproduced by petitioner concerning punishment of "wife beating" on an interstate common carrier's vehicle (Pet. 10 n.*) reveals, Congress harbored no such doubts as to the scope of its authority as to matters affecting carriers in commerce, however remotely. Contrary to petitioner's assertion (Pet. 11), the remarks of Senator Culberson introducing his amendment to the provision which became Section 660, see 51 Cong. Rec. 14041 (1914), reveal that Congress's concern was merely to ensure that the criminal sanction did not overstep the bounds of federal authority under the Commerce Clause. Plainly, that concern was satisfied by the requirement that moneys embezzled must arise or accrue from, or be used in whole or part in, interstate or foreign commerce, as that requirement was applied by the court of appeals.

2. Petitioner's suggestion that the practices of federal prosecutors in the Southern District of New York are at odds with those of other prosecutors and that the decision below will foster an unhealthy distortion of the corpus of federal criminal law are unfounded. First, and most importantly, petitioner ignores the fact that the Second Circuit held that Section 660 does require that the funds embezzled be linked to commerce, and not merely that they be linked to a firm that participates in transactions in commerce. Moreover, the court of appeals' statement that the indictment and jury instructions could have been drafted more precisely, and its conclusion that there was no reversible error, are unlikely to provoke the defiant reaction forecast by petitioner. Rather, the only inference to be drawn from the opinion of the court of appeals is that prosecutors should not elide the two jurisdictional requirements of Section 660 (see Pet. App. A11-A12). In any event, petitioner acknowledges that the problem he perceives is limited to the Southern District of New York, and the issue has generated no conflict among the courts of appeals. There is accordingly no occasion for this Court to review the matter. In the unlikely event that petitioner's forecast is borne out in the future, the Court of Appeals for the Second Circuit has demonstrated, by its opinion, the ability to take any corrective action needed, in an appropriate case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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In The Supreme Court of the United States

OCTOBER TERM 1980

VINCENT E. MARINO, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Vincent E. Marino respectfully submits this reply brief in support of his petition for a writ of certiorari and in opposition to the brief submitted by the United States.

SUMMARY OF ARGUMENT

In his petition for a writ of certiorari, Mr. Marino argued that the panel's decision was demonstrably incorrect (Pet. 5-17),* that it conflicts with the practice in every other district that has prosecuted cases under 18 U.S.C. § 660 (Pet. 17-20), and that the decision distorts the relationship between Section 660 and other sections of the federal criminal code (Pet. 20-21). In its response, the Government attempts to support the correctness of the panel's decision by semantic legerdemain and selective references that emphasize rather than rebut the significance of Mr. Marino's argument. The Government then attempts to diminish the importance of an admitted conflict in practice among prosecuting districts by arguing, in essence, that this Court should simply tolerate the unprecedented interpretation adopted by the Southern District of New York and by no other district. With respect to Mr. Marino's demonstration that the panel's decision reverses the relationship of Section 660 to other criminal sections, the Government makes no response and apparently has none.

ARGUMENT

I. The Decision of the Panel is Plainly Incorrect

The Government's principal defense of the panel's decision consists of misstating the panel's holding. The Government now contends that "both the federal prosecutor in the Southern District of New York and the court of appeals acknowledged that Section 660 requires proof that the funds embezzled arose in whole or in part from interstate or foreign commerce" (G.Br. 8). Depending on what the Government intends this ambiguous statement to mean, it is either untrue or meaningless.

The thrust of Mr. Marino's argument, from the time of his pre-trial motion to the present petition, has been that

* "Pet." refers to Mr. Marino's petition, and "G.Br." to the Government's brief in opposition.

Section 660 requires an independent and direct link between the embezzled funds and commerce; any other interpretation conflicts with the legislative history and renders the second jurisdictional requirement superfluous. While the panel stated that "the statute requires that the embezzled funds themselves be connected with foreign or interstate commerce, not that the funds be connected to a business which is engaged in commerce" (Pet. A-12), a statement upon which the Government now heavily relies, it specifically undermined this language by emphasizing that the second link between the embezzled funds and commerce was satisfied if the embezzlement was merely from the general funds of a common carrier:

> "The correct focus is on the connection between the funds of the common carrier and foreign or interstate commerce and not between the funds and some particular transaction in commerce."

(Pet. A-10).* Thus, despite its general disclaimer, the panel permitted the conviction to stand when the only allegation or proof that the embezzled funds themselves "arose from" interstate or foreign commerce, as required by the statute, was the showing that the embezzled funds derived from the general funds of Prudential Lines. Indeed, the Government cannot dispute, and tacitly accepts the fact, that every single element of the fraudulent scheme from which the funds were generated took place in New York State. (Pet. 2-3). The panel's holding thus establishes that in the Second Circuit, embezzlement from general funds of a carrier suffices to meet *both* the first and the second jurisdictional requirements of Section 660.

Apart from its attempts to camouflage the actual holding of the panel, the Government is reduced to distorting or

* In the Court of Appeals, the Government squarely took the position that a link between the embezzled funds and any general funds of a carrier, without more, satisfied the second jurisdictional requirement. Indeed, the relevant heading of its brief, at p. 22, stated "The Required Nexus With Commerce Is Satisfied By Funds Converted From A Carrier's General Reserves."

selectively interpreting the statute, its legislative history, and the canons of interpretation.

A. The Legislative History.

The Government's only response to Mr. Marino's elucidation of Section 660's legislative history is to claim that the references to the legislative debates were "selective", G.Br. 9 at n.8, and to assert in a general fashion that the "cited debates do not support petitioner's sweeping assertion." G.Br. 9. The simple answer to this is that the Court is invited to read the legislative debates in their entirety.* These debates, which cannot be discussed in detail here because of limited space, show in the clearest possible fashion that both the supporters and the detractors of Section 660 did not intend the statute to reach embezzlements, even from the general funds of a common carrier engaged in commerce, unless there was some direct and independent link between the embezzled funds and commerce. See, e.g., 51 Cong. Rec. at 14036 (remarks of Senator White) ("I believe Congress has the power to make it an offense to steal property on a railroad car or steamboat *while being carried from one state to another*") (emphasis added).

Furthermore, the two specific portions of the legislative history that the Government does address are clearly misinterpreted by the Government and in fact support Mr. Marino. The Government's response to the dialogue between Senator Cummins and Senator White, reproduced at page 10 of the petition, is to claim that the debate reflected a concern that "thefts directed against intrastate manufacturing operations might not lie within the purview of federal criminal legislation", G.Br. 10, at n.8. This observation simply makes no sense when compared with the senators' actual remarks. Both in the initial Cummins-White colloquy and in the subsequent "wife beating" remarks quoted at Pet. 10 at n., the point of the senators' remarks was not that the legislation might impermissibly extend to "thefts directed against intrastate manufacturing operations," as the Government

* The debates were reproduced *in toto* as pages 670-699 of the Joint Appendix in the Court of Appeals.

suggests, but rather reflected their view that the theft had to relate directly to property that "was in process of transportation from one state to another." In short, in this and in many other portions of the debate that the Government chooses to ignore, the senators unmistakably required a direct link between the embezzled funds and commerce, and not merely a link between the general funds of a common carrier and commerce.

B. Canons of Interpretation.

In his petition, Mr. Marino pointed out that two canons of interpretation squarely support his reasoning. The Government responds to only one of these arguments, and even in this its logic is wanting.

As previously demonstrated, Pet. 12-14, the panel's interpretation of Section 660 renders the second jurisdictional requirement, which was the product of a long and unusually careful congressional debate, virtually meaningless: as a matter of logic and experience, the general funds of any corporation "engaged in commerce as a common carrier" must derive, at least "in part," from such commerce. If Congress had intended merely to require an indirect link to interstate or foreign commerce, as the Government now suggests, the second jurisdictional requirement would add nothing to the first. Since words in the statute should not be construed as excess verbiage, it follows that the Government's interpretation of Section 660 is incorrect. See Petition at 12-13.

The Government's only response to this is to claim that "one can readily imagine circumstances in which a carrier may engage in intrastate operations, as well as interstate or foreign ones, and maintain the funds from such local operations in an account distinct from other funds." G.Br. 10. This brand-new theory, never previously advanced by the Government, borders on being frivolous. While one can theoretically postulate a situation where a corporation "engaged in commerce as a common carrier" might also engage in intrastate commerce and keep a separate account for revenues from such activities, one cannot "readily

imagine" that this occurs with any frequency. More fundamentally, the issue never appears in any of the extended debates on Section 660 that led to the addition of the second jurisdictional requirement. Indeed, the length and the seriousness of the senators' remarks demonstrate that the issue they were considering was something far more fundamental than the elimination of a remote possibility. Rather than avoiding the impact of a theoretical accounting procedure, as the Government now contends, the senators in 1914 obviously were wrestling with what to them appeared to be a significant question of their constitutional powers under the Commerce Clause. As the panel conceded, the senators resolved their doubts by adding a second jurisdictional requirement to Section 660. The Government's attempt to characterize this thoughtful constitutional debate as a discussion of a remote theoretical issue is absurd.

Equally significantly, the Government chooses not to respond to Mr. Marino's demonstration that the rule of lenity articulated in *United States* v. *Bass*, 404 U.S. 336 (1971), and its progeny squarely applies to this case. Both aspects of the *Bass* decision—that is, its holding that an ambiguous statute should be interpreted in favor of a defendant, and its statement that the courts will not lightly interfere with the federal-state balance, see Pet. 13-14—require rejection of the Government's interpretation. Whatever the basis for the Government's tortured reading of Section 660, it cannot and does not argue that Section 660 *unambiguously* criminalizes embezzlements from the general funds of a common carrier. Particularly since Congress showed throughout its lengthy debate that altering the federal-state balance was precisely what it wanted to avoid, the *Bass* decision squarely supports Mr. Marino. The Government's decision to avoid any attempt to distinguish *Bass* is understandable and revealing.

The Government then suggests that whatever the deficiencies in the indictment, proof, and jury instructions, they did not "substantially impair[ ] petitioner's rights—a question not even addressed by the petition." G.Br. 8 (footnote omitted). This statement simply reflects an appalling

failure to read Mr. Marino's petition. As Mr. Marino demonstrated at some length, Pet. at 15-17, relying on decisions the Government has chosen not to address or distinguish, the indictment did not allege a crime, the facts alleged at trial did not show an independent link with commerce as demonstrated in every other opinion under Section 660 in which the facts are set forth, and the charge to the jury did not reflect the requirements of the statute. Given this pervasive misinterpretation of the statute, to which the Government doggedly adhered even after the issue was raised before trial, it is difficult to imagine an error more prejudicial to Mr. Marino.

Furthermore, the Government's claim that there was no prejudice to Mr. Marino is particularly ironic in the context of this case. The indictment upon which Mr. Marino was tried was the fourth in a series of superseding indictments against him, and even the final indictment was redacted on the motion of the Government during the trial. The Government thus demonstrated that it had no compunction about revising or superseding the indictment if necessary. Why, then, did the Government adamantly refuse to redraft the Section 660 allegations of the final indictment when the issues presented in this petition were squarely raised by Mr. Marino long before trial? If the issue had been nothing more than an incidental question of drafting, as the Government now claims, nothing would have been easier than to recast the indictment to meet the requirements of the statute. The reason the Government did not do so is clear, and emphasizes both the incorrectness of its interpretation and the prejudice to Mr. Marino. As the Government knew, and as the facts proved at trial, every incident of the alleged embezzlement scheme took place within New York State. Pet. 2-3. Unlike every other Section 660 prosecution for which records exist, see Pet. 16-17, there was no travel or communication of any kind across a state line during the planning or execution of the alleged scheme. The Government thus knew that if it alleged that the embezzled funds had been "arising or accruing from, or used in, such commerce," it would be called upon to prove such a link and be found wanting. Rather

than highlighting this lapse in its proof, the Government chose to camouflage the issue by adhering to its unprecedented and anomalous interpretation of the statute.

In short, the Government's interpretation of Section 660 was clear and prejudicial error. The panel's decision should be reversed.

2. The Decision in this Case Conflicts with the Practice in Every Other District that Has Used Section 660

As the Government grudgingly acknowledges, the factual showing upon which Mr. Marino's conviction rests and the allegations set forth in the indictment conflict with the factual showings and with the indictments in every single Section 660 prosecution outside the Southern District of New York for which records exist. See Pet. 16-20. Indeed, the Government—which has records of its own to check the categorical statement made by Mr. Marino in his petition that his conviction is unique in these respects—makes no attempt to show that a single prosecution in Section 660's sixty-seven year history has been based upon an indictment or factual showing such as those found sufficient in this case. Rather, the Government chooses to dismiss this embarrassing issue with a single page of off-hand platitudes at the end of its brief. G.Br. 11.

As before, the Government's principal response is that the Second Circuit panel did not mean what it said, and that the Court "held that Section 660 does require that the funds embezzled be linked to commerce, and not merely that they be linked with a firm that participates in transactions in commerce." *Id.* As stated, the panel in fact held squarely to the contrary, see pages 1-2, *supra.* The Government next claims that the panel's decision is "unlikely to provoke the defiant reaction [from the prosecutor] forecast by petitioner." *Id.* This glib statement ignores the fact, demonstrated in Mr. Marino's petition at 19, that the prosecutor in New York City has deliberately resurrected Section 660 as a prosecutorial tool, and has *already* persisted in its unique interpretation of the statute even after the issues presented in this petition were squarely raised by Mr. Marino.

Finally, the Government attempts to foreclose review of the panel's decision by pointing out the obvious, that is, that there is "no conflict among the courts of appeals" on this issue. *Id.* For the reasons set forth in Mr. Marino's petition at 19-20, to which the Government does not respond, this reasoning is illogical and pernicious. As the Government tacitly concedes, the reason there is no "conflict among the courts of appeals" is precisely because in every prosecuting district for which records exist, the prosecutor has properly alleged both jurisdictional requirements of Section 660 and has proven a direct link between the embezzled funds and commerce. There is no "conflict" because the prosecutor's correct interpretation in every other district has obviated the need (and the jurisdiction) for an appeal by a convicted defendant. The Government's attempt to hide behind this obvious jurisdictional fact and claim it as a lack of "conflict" simply does not address the fact that the practice tolerated in this case conflicts with the practice in every other district in the country.

3. The Panel's Decision Creates an Unwise and Unintended Policy in the Administration of the Federal Criminal Laws

In the third part of Mr. Marino's "Reasons for Granting the Writ," Pet. 20-21, he demonstrated that the panel's decision reverses the relationship between Section 660 and other statutes, passed many years after Section 660, that have far more liberal jurisdictional requirements. The importance of this point cannot be overemphasized, although the Government's only response is to ignore it.

The principal reason for the Government's and the panel's continued inability to grasp the significance of Mr. Marino's argument is that they have failed to recognize that Section 660 had its genesis in 1914, at a time long before Congress's exploration and utilization of its expansive powers under the Commerce Clause. For example, the panel stated that the Senate debate read as a whole demonstrated that "Congress intended the 'arising requirement' to mean that the funds must be derived from or used in commerce in such a way that theft of the funds *has an adverse effect on*

foreign or interstate commerce." Pet. A-10 (emphasis added). This statement, and others like it that permeate the panel's opinion and the Government's brief, are based on a lack of historical perspective. The "effects test" for determining Congress' power under the Commerce Clause was not established by this Court until the New Deal era in *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). Neither the Government's reasoning nor the panel's acceptance of it reflects the view of legislative power under the Commerce Clause that motivated Congress in 1914.

As set forth in Mr. Marino's petition at 20-21, the prosecutor could undoubtedly have chosen to use the more modern and familiar provisions of the wire and mail fraud statutes or the Travel Act had the alleged scheme involved the use of a single interstate telephone call, a single use of the mail, or a single trip across state lines. The Government appears to concede that in this case even those modest jurisdictional requirements could not be met. But the Government cannot and understandably does not attempt to defend the anomaly created by the panel's decision, which allows the prosecutor to use an older and far more restrictive statute in factual circumstances where more modern and widely applicable federal statutes do not apply.

CONCLUSION

This Court's last and only occasion to review Section 660 was in *United States* v. *Cook*, 384 U.S. 257 (1966), more than fifteen years ago. The issue decided in that case, whether an unincorporated business was included within the phrase "firm, association or corporation," was of far less significance than the issues presented here. For reasons that the Government cannot successfully rebut, the panel's decision in this case means that a prosecution such as that of Mr. Marino is tolerated in one district when neither the drafting of the indictment nor the sufficiency of proof would have been permitted in any other district. If Mr. Marino's activities had occurred any place other than in the Southern District of New York, this prosecution would not have taken place.

Federal prosecutors are now resurrecting Section 660 as a prosecutorial tool. Pet. 17-20. The application of this archaic statute by the most active prosecuting office in the country in a manner flatly inconsistent with its application every place else should be reviewed by this Court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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